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IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1993

FEDERACION DE MAESTROS
DE PUERTO RICO
PETITIONER

V.

LABOR RELATIONS BOARD
RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

a) Whether the Labor Relations Board can certify a union, Federación Puertorriqueña, composed in its entirety by supervisors, management, decision and policy making employees in contravention to the federal labor policy and sections 2(2), 2(3) and 14(a) of the National Labor Relations Act.

b) Whether the Superior Court of Puerto Rico, San Juan Part, and the Labor Relations Board can order Federación de Maestros to negotiate and bargain collectively with Federación Puertorriqueña, eventhough the later is a union created by a private agreement, composed in its entirety by policy and decision making personnel and which also waived expressly its right to negotiate and bargain collectively with Federacion de Maestros.

c) Whether the Labor Relations Board can forbid Federación de Maestros from presenting evidence in order to prove the managerial, supervisory, decision and policy making character of the employees in the claimed bargaining unit.

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PETITION FOR WRIT OF CERTIORARI

Federación de Maestros de Puerto Rico, from hereinafter Federación de Maestros, respectfully petitions for a writ of certiorari to review a Resolution of the Supreme Court of the Commonwealth of Puerto Rico in the present case.

OPINIONS BELOW

The Decision and Order of the Labor Relations Board, D-92-1201 issued on October 31st, 1991, case number CA 89-57, not published. The Decision and Order of the Labor Relations Board, D 92-1201 issued on March 5th, 1992, case number CA 89-57, not published. The judgment of the Superior Court of Puerto Rico, San Juan Part, case number KAC 92-0937 (901) issued on December 2nd, 1992, not published. The judgment of the Court of Appeals (Puerto Rico) issued on May 5th, 1993, case number SNCE #93-0034, not published. The Resolution of the Supreme Court of the Commonwealth of Puerto Rico issued on July 2nd, 1993, case number CE-93192, not published. The Resolution of the Supreme Court of the Commonwealth of Puerto Rico issued on August 20th, 1993, case number CE 93-192, not

published. The Resolution of the Supreme Court of the Commonwealth of Puerto Rico, case number CE 93-192, issued on September 17th, 1993, not published.

JURISDICTION

The Resolution of the Supreme Court for the Commonwealth of Puerto Rico for the writ of certiorari filed by Petitioners was entered on July 2nd, 1993. Petitioners filed a timely petition for reconsideration and second petition for reconsideration, which were denied on September 17th, 1993. Copies of the resolutions denying the petitions are attached as exhibits I, II and III accordingly. The jurisdiction of this court is invoked under 28 U.S.C. sec. 1258.

CONSTITUTIONAL AND STATUTORY PROVISIONS INCLUDED

1. Fourteenth Amendment of the Constitution of the United States of America, provides in relevant parts, that:

"... nor shall any state deprive any person of life, liberty or property, without due process of law..."

2. Section (2) of the National Labor Relations Act, 29 U.S.C. sec. 152, which provides, that:

"... the term "employer" includes any person acting as an agent of an employer, directly or indirectly..."

3. Section 2(3) of the National Labor Relations Act, 29 U.S.C. sec. 152(3), provides, in pertinent parts, that:

"The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include... any individual employed as a supervisor..."

4. Section 2(11) of the National Labor Relations Act, 29 U.S.C. sec. 152(11) provides that:

> "The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them or to adjust their grievances, or effectively to recommend such action if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

5. Section 7 of the National Labor Relations Act, 29 U.S.C. sec. 157 provides, in pertinent part, that:

> "Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other

concerted activities for the propose of collective bargaining or other mutual and or protection..."

6. Section 8 of the National Labor Relations Act, 29 U.S.C. sec. 158 provides that:

"(a) It shall be an unfair labor practice for an employer (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7; (2) to dominate or interfere with the formation or administration of any Labor organization... (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

7. Section 14(a) of the National Labor Relations Act, 29 U.S.C. sec. 164 provides, in relevant part, that:

"Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors

as employees for the purpose of any law, either national or local, relating to collective bargaining..."

STATEMENT OF THE CASE

Federación de Maestros, is a bonafide organization created under the Law Number 134 of July 19, 1960, 3 L.P.R.A.\sec. 702. Petitioner is recognized by the Department of Education and the Department of Labor as the representative for some twelve thousand classroom teachers of the educational system. The petitioner has, throughout the island of Puerto Rico, ten Regional Representatives. The functions and duties of each of the representatives are clearly established in Federación de Maestros rules, regulations and job applications wich are included as exhibits V, VI, VII and VIII. In synthesis these are: (a) execute the Federación de Maestros organization's policy; (b) file and discuss complaints and other problems with the School Director or the Department of Education Representative; (c) keep in close communication with the director of the Department of Organization and Development of Federación de

Maestros; (f) participate in the meetings of the leader corps of Federación de Maestros; (g) they also belong to the Executive Committee, the Board of Directors, the Delegates Assembly and the General Assembly, which are the bodies that direct and control all the internal, as well as the external, affairs of Federación de Maestros. See exhibits IV, V, VI, VII and VIII. From all of the above it is clear that the Regional Representatives are supervisors, or decision and policy making employees, therefore excluded under section 2(11) from the protection afforded by the National Labor Relations Act.

On July 1st, 1988 the Regional Representatives, also known as the Organizers, filed a petition to organize themselves in a union before the Labor Relations Board under the name of Federación Puertorriqueña de Trabajadores.

Petitioner, Federación de Maestros, informed the Labor Relations Board their refusal to recognize Federación Puertorriqueña as the official bargaining representative of the Regional Representatives because of the policy

and decision making functions of the members of the later in the internal as well as the external affairs of Federación de Maestros.

Regarding the July 1st, 1988, petition, the Labor Relations Board ordered an election which took place on October 13th, 1988. Federación Puertorriqueña won the election, nevertheless Federación de Maestros did not recognized it as a valid and legitimate bargaining representative since their members were supervisors, management, decision and policy making employees. On March 8th, 1989, a hearing was scheduled by the Labor Relations Board. The purpose of the hearing was to discuss the refusal of Federación de Maestros to negotiate and recognize Federación Puertorriqueña. However, at the beginning of the hearing Federación de Maestros and Federación Puertorriqueña informed the Board that they reached an agreement in which petitioner recognized Federación Puertorriqueña as the exclusive bargaining representatives for the Regional Representatives. In response the union agreed not to exercise its right to bargain

collectively with the employer, Federacion de Maestros. See exhibit IX.

On May 28th, 1989, the Board relying upon the parties agreement issued a Decision and Certification Order by which it recognized Federación Puertorriqueña as the exclusive bargaining representative of the Regional Representatives. It also closed the case regarding the representation issue. Exhibit X.

Later on, in contravention with the agreement, Federación Puertorriqueña required Federación de Maestros to subscribe some stipulations that were the equivalent to the negotiation of mandatory subjects of a collective bargaining agreement. Federación de Maestros refused, due to the agreement that existed between the parties. Federación Puertorriqueña then filed a charge before the Labor Relations Board since Federación de Maestros had refused to negotiate. On October 31st, 1991, the Labor Relations Board entered a Decision and Order in which it concluded that due to the agreement, Federación de Maestros had the duty to bargain collectively with Federación Puertorriqueña. See exhibit XI.

On November 20th, 1991, petitioner, Federación de Maestros, filed a Motion for Reconsideration before the Board in which it reiterated that the members of Federación Puertorriqueña were intimately involved with the management, decision and policy making of Federación de Maestros, therefore the Labor Relations Board cannot compelled petitioner to negotiate and bargain with Federacion Puertorriqueña.

On March 5th, 1992 the Board ordered Federación de Maestros to negotiate a collective bargaining agreement with Federación Puertorriqueña. See exhibit XII. The Board filed before the Superior Court of Puerto Rico, San Juan Part, a petition to enforce the order of May 5th, 1992. The Superior Court of Puerto Rico granted the petition on December 2nd, 1992. See exhibit XIII. On December 23rd, 1992, petitioner filed a Motion for Reconsideration which was denied by the Superior Court of Puerto Rico.

Petitioner filed then a Certiorari before the Court of Appeals of Puerto Rico by which it sought to review the decisions of the Labor Relations Board and the Superior Court of Puerto

Rico, San Juan Part. The Court of Appeals denied petition on grounds that the agreement between the parties was valid. See exhibit XIV.

On June 3rd, 1993, petitioner filed a Certiorari before the Supreme Court of the Commonwealth of Puerto Rico which sought to review the decision of the Court of Appeals. See exhibit XV. The Court did not grant the Certiorari, the resolution was issued on July 2nd, 1993. See exhibit I. A First Motion for Reconsideration was filed before the Supreme Court of the Commonwealth of Puerto Rico which was denied. See exhibit II and XVI. A Second Motion for Reconsideration was filed before the Supreme Court of the Commonwealth of Puerto Rico and it was also denied on September 17th, 1993. See exhibit III and XVII.

REASONS FOR GRANTING THIS PETITION

Petitioner cites the following reasons for granting this petition: a) The Supreme Court of the Commonwealth of Puerto Rico erred in validating an order which certified a union created by a private agreement composed in its entirety by management, decision and policy

making employees, in contravention to the National Labor Relations Act, the decisions of the National Labor Relations Board, and the general doctrine adopted by the Supreme Court of the United States; See exhibits IV, V, VI, VII, VIII, XIX, XX, XXI, XXII and XXIII. b) the Supreme Court of the Commonwealth of Puerto Rico erred in validating an order which deprived petitioner's right to a due process of law since it prohibited Federación de Maestros the from introducing evidence during the hearing before the board in order to prove the managerial, policy and decision making character of the employees that were members of Federación Puertorriqueña. See exhibit XVIII.

SUMMARY OF ARGUMENT

Our contention is that the Labor Relations Board decision was erroneous when it certified a union composed of management, policy and decision making employees, in contravention to the National Labor Relations Act, the decision of the National Labor Relations Board and the Supreme Court of the United States.

The purpose of the National Labor Relations

Act, as amended, 29 U.S.C., sec. 152 was to encourage and promote the practice and procedure of collective bargaining by protecting the right of the employees to full freedom of association, self-organization and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

The National Labor Relation Act, as amended, supra, defines the term employee in section 2(3) in a manner which expressly excludes the management, policy and decision-making employees from the collective bargaining process, as has been interpreted by this Supreme Court. The employer is not obliged to bargain collectively with a union formed by policy and decision making employees. The positions named as Regional Representatives clearly fall in the definition of a supervisor or management and decision making employee as those terms are defined in section 2(11) of the National Labor Relations Act, as amended, 29 U.S.C. sec. 152. The functions that performed the Regional

Representatives are clearly established in Federación de Maestros rules, regulations job descriptions and job eveluations, which are included as exhibits IV, V, VI, VII, and VIII in this writ. Their functions, among others, are; 1) the execution of the organization policy of Federación de Maestros; 2) filing and discussing complaints; 3) keep in close and constant communication with the director of the Department of Organization and Development of Federación de Maestros. They are also members of the Executive Committee, the Board of Directors, the Delegates Assembly and the General Assembly, which are the bodies that direct and control the internal, as well as the external, policy making functions of Federación de Maestros. They also have the right to vote in the assemblies, they even have the right to impugn and even reverse Federación de Maestros president's decisions.

From all of the above, it can be easily established that the Regional Representatives or Organizers cannot organize themselves in a union nor bargain collectively with their employer, Federación de Maestros. For the same reason the

refusal of petitioner to bargain collectivelly with Federacion Puertorriqueña does not constitute an unfair labor practice.

The Labor Relations Board's decision is erroneous where it validated an order which deprived Federación de Maestros of a due process of law since it prohibited petitioner from presenting evidence in order to prove the management and decision making functions of the Regional Representatives. In the hearing before the Labor Relations Board, it was expressly mentioned in the report of the Hearing Examiner, that petitioner in various occasions tried to present evidence related to the impugnation of the certification of the appropriate bargaining unit but it was not allowed. See exhibit XVIII.

The Constitution of the United States dictates that no person shall be deprived of life, liberty or property without a due process of law. The presentation of evidence, as well as to refute that presented against, is part of the due process of law and one of the fundamental principles of the american justice system which no court, agency or forum can deprive a litigant

from. **ARGUMENT**

I. THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO ERRED IN VALIDATING AN ORDER OF THE LABOR RELATIONS BOARD WHICH CERTIFIED A UNION COMPOSED IN IT'S ENTIRETY BY MANAGERIAL, SUPERVISORS, POLICY AND DECISION MAKING EMPLOYEES.

According to the National Labor Relations Act, the decisions of the United States Supreme Court and the Federal Labor Relations Board, the employees that are intimately involved in management, the supervisors, the policy and decision making employees are excluded from the protection afforded by the Federal Labor Relations Act. In the present case the Regional Repre-sentatives are; (1) stock holders in the corporation known as Federación de Maestros de Puerto Rico; (2) they vote in the elections; (3) they can run for elective positions; (4) they have the right to reverse or refute through general assemblies or meetings the decisions of Federación de Maestros president or administrator; (5) they file and discuss complaints and other problems with the school

director or the Department of Education Representative; (6) they organize and recruit teachers in the schools; (7) as representatives of their Region they are members of the Executive Committee, the Board of Directors, the Delegate Assembly and the General Assembly which are the bodies that direct all the internal, as well as the external, affairs of Federación de Maestros. See exhibits IV, V, VI, VII and VIII.

It must be point out that the Executive Committee is the supreme authority of Federación de Maestros when the Board of Directors is not in session, it is also the body in charge of making all the policy decisions relating to salary and all the other benefits of Federacion de Maestros employees. The Regional Representatives also control petitioner's daily operations and pass judgment on the collective bargaining agreement. See copy of the record of the proceedings of said committe dated, January 29th, 1989, December 29th, 1989, February 3rd, 1990, and December 3rd, 1990, exhibits XIX, XX, XXI, XXII and XXIII. In the present case the Regional Repre-sentatives must be excluded from

being part or creating an appropriate bargaining unit because of their involvement, among other things, in the management, decision and policy making process, both internal as well as external of Federación de Maestros.

The National Labor Relations Act defines the term employee as: "The term employee shall include any employee...but shall not include... any individual employed as supervisor". Federal Labor Relations Act, sec. 2(3), 29 U.S.C. sec. 152(3). The National Labor Relations Act expressly excludes the executives as well as the supervisors from its protection, since they are not included in the definition of term employee nor in section 7 of the Act.

The National Labor Relations Act defines the term supervisor as: "...any individual having authority, in the interest of the employer, to hire transfer, suspend, lay off, recall, promote discharge, assign, reward, or discipline other employees, or responsible to direct them or to adjust their grievances, of effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not

of a merely routine or clerical nature, but requires the use of independent judgment. "National Labor Relations Act, sec. 2(11), 29 U.S.C. 152(11). The Labor Relations Board cannot certify a union composed of supervisors, policy and decision making employees. Being the Regional Representatives supervisors, or policy and decision making employees, the Labor Relations Board did not have jurisdiction to issue an order requiring petitioner to recognize and bargain collectively with Federación Puertorriqueña. See: Leedom v. Kyne, 358 U.S. 184 (1984). This Court has ruled that a group of supervisors, management and decision making employees cannot invoke the protection of the National Labor Relations Act nor file a charge for illicit labor practice for refusal of the employer to bargain, since that right is for employees only, not for supervisors. N.L.R.B. vs. Talladega Cotton, 213, F. 2d 209, 217 (1954). There are other groups, with similar and/or identical functions to those of the Regional Representatives, that are not covered by the Federal Labor Relations Act nor have the

right to bargain collectively with an employer.

According to the Supreme Court of the United States, managerial employees are not protected by the National Labor Relations Act. These types of employees are those whose interests are intimately involved with management or that formulate, determine or execute the management policy. See: N.L.R.B. v. Bell Aerospace, 416 U.S. 267, 289 (1974); Yeshiva Univ. v. N.L.R.B., 444 U.S. 672, 683 (1980).

The Supreme Court of the U.S. has also defined managerial employees in the often quoted opinion of Yeshiva, supra, as: "Managerial employees must exercise discretion with or even independently of established employer policy and must aligned with management... normally an employee may be excused as managerial only if he represents management interest by taking or recommending discretionary actions that effectively control or implement employer policy". Yeshiva University v. N.L.R.B., supra, at page 683; General Dynamics Corp., 213 N.L.R.B. 841, 857-858 (1974).

Another category of employees exclude from the

National Labor Relations Act are the confidential employees. Under the term confidential employee this Court has excluded those employees that have some connection with the employer labor policy or those who assist, in a confidential capacity, the persons who formulate, determine and execute the employer management policy. Also, those that because of their job have access to confidential information about the collective bargaining process between the union and the employer. N.L.R.B. v. Hendricks County, 454 U.S. 170, 189 (1981); N.L.R.B. v. Bell Aerospace, supra, at pages 283, 284. The National Labor Relations Act in section 14(a), 29 U.S.C., sec. 164 dictates: "Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this act shall be compelled to deem individuals herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining".

The aforementioned section has been

interpreted by the different Federal Circuit Courts of Appeals and the United States Supreme Court as to mean that no employer shall be compelled to treat supervisors, managerial, decision and policy making personnel as employees for the purpose of the collective bargaining process.

The Supreme Court of the U.S. has consistently held that decision and policy making employees are exempted from the protection of the National Labor Relations Act, therefore the Labor Relations Board nor the National Labor Relations Board can exercise their jurisdiction over any labor dispute between these employees and the employer. The Federal law preempts this area of law and any state or local law in contrary is invalid. The Supreme Court of the U.S. in the often quoted opinion of Beasley v. Food Fair, Inc. 416 U.S. 653, 657-661 (1974), stated, regarding a union composed of supervisory employees: "But the second clause is a broad command that no employer shall be compelled to treat supervisors as employees for the purpose of any law either national or local relating to

collective bargaining. Consistently with this broader command, and Hanna's further statement that congress propelling intention...[was]... to relieve employers from any compulsion under the Act and understate law to countenance or bargain with any union of supervisory employees...

To permit a state law to deprive an employer of his right to discharge his supervisor for membership in a union would completely frustrate the congressional determination to leave this weapon of self help to the employer...

There were differences in the specific provisions addressed to supervisory employees, but no difference in objective. Employers were not to be obliged to recognize and bargain with unions including or composed of supervisors, because supervisors were management obliged to be loyal to their employers interests and their identity with the interests of rank and file employees might impair that loyalty and threaten realization of the basic ends of Federal Labor legislation. Thus the House Report stated:

Management like labor must have faithful agents... If we are to produce goods compe-

titively, and in such large quantities that many can by them at low cost, then just as there are people on labor's side to say what workers want and have a right to expect, there must be in management and loyal to it persons not subject to influence or control of unions, not only to assign people to their work, to see that they keep at their work and do it well, to correct them when they are at fault, and to settle their complaints and grievances, but to determine how much work employees should do, what pay they should receive for it, and to carry on the whole of labor relations". H.R. Rep. No. 245, 80th Cong. 1st. Sess. 16 (1947). The same theme that unionizing supervisors threatened realization of the basic objectives of the Act to increase the out put of goods in commerce by promoting labor peace is repeated in the senate Report...

This history compels the conclusion that congress dominant purpose in enacting section 2(3), 2(11) and 14(a) was to redress a perceived imbalance in labor management relationships that was found to arise from putting supervisors in the position of serving two masters with opposed

interests. See generally N.L.R.B. v. Bell Aerospace Co., 416 U.S. 267, 85 L.R.R.M. 2945 (1974) we conclude therefore that the second clause & 14(a) relieving the employer of obligations under "any law, either National or local, relating to collective bargaining" applies to any law that requires an employer "to accord to the front line of management the anomalous status of employees".S Rep No 105, 5."

The Supreme Court of the U.S. in the aforementioned opinion of Yeshiva, supra, considered a petition for the certification of a union composed in its entirety by university professors, the court stated: "But professionals, like other employees, may be exempted from coverage under the Act's exclusion for supervisors who use independent judgment in overseeing other employees in the interest of the employer, or under the judicially implied exclusion for managerial employees who are involved in developing and enforcing employer policy. Both exemptions grow out of the same concern: That an employer is entitled to the undivided loyalty of its representatives.

Beasley v. Food Fair of North Carolina, supra, at pages 661-662; N.L.R.B. v. Bell Aerospace, Co., supra, at pages 281,282.

In synthesis the Supreme Court concluded that the professors, due to their participation and involvement in the policy and decision making process of the employer and/or university had to be considered as managerial employees and therefore exempted from the protection of the National Labor Relations Act. The Board could not exercise its jurisdiction over them, neither to certificate the professors as a union nor to order an employer to bargain and negotiate collectively with them.

In the present case the Regional Representatives have direct access to confidential information regarding the collective bargaining process, they have the right to approve or disapprove the collective bargaining agreement as well as the decisions taken by the president of Federación de Maestros, they file and discuss grievances, they participate in the recruitment and discharge of employees, they have a voice and vote in the Executive Committee, the Board

of Directors, and the Delegates Assembly, which are the bodies that direct and control all affairs of Federacion de Maestros. In synthesis they play an active and decisive role in both the internal and external policy and decision making process of Federación de Maestros. See exhibits IV, V, VI, VII, VIII, XIX, XX, XXI, XXII and XXIII.

From all the above it is clear that the Supreme Court of the Commonwealth of Puerto Rico erred in validating the Order of the Labor Relations Board which certified Federación Puertorriqueña as the exclusive bargaining representative of the policy and decision making personnel of Federación de Maestros.

II. SUPPREME COURT OF THE COMMONWEALTH OF PUERTO RICO ERRED WHEN IT VALIDATED AN ORDER THAT DEPRIVED FEDERACION DE MAESTROS OF ITS CONSTITUTIONAL RIGHT TO A DUE PROCESS OF LAW, SINCE IT FORBID FEDERACION DE MAESTROS FROM PRESENTING EVIDENCE REGARDING THE MANAGEMENT AND DECISION MAKING CHARACTER OF THE EMPLOYEES THAT WERE MEMBERS OF THE UNION.

The procedural due process requirements apply

only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of life, liberty and property. To determine whether due process requirements apply, we must first look not to the weight, but to the nature of the interest at stake. We must look to see if the interest is within the Fourteenth Amendment's protection of life, liberty and property.

The United States Supreme Court defined property, in the often quoted opinion of Board of Regents v. Roth, 408 U.S. 564, 577 (1972). "...property interests, of course, are not created by the constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from and independent source such as state law rules or understanding that secure certain benefits and that support claims of entitlement to those benefits..." In the opinion of Meyer vs. Nebraska, 262 U.S. 390, 399 (1922). the Supreme Court of the United States defined liberty as: "...while this court has not attempted to define with exactness the liberty... guaranteed by the Fourteenth Amendment, the term has received much

consideration and some of the included things have been definitely stated, without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized ...as essential to the orderly pursuit of happiness by free men..." In the present case Federación de Maestros has a property interest conferred by sections 2(3), 2(11), 7 and 14(a) of the National Labor Relations Act, which consists of the right to refuse to negotiate and bargain collectively with a union composed in its totality by management, supervisors, policy and decision making employees. The aforementioned sections of the Act dictate that an employer does not have a duty to negotiate and bargain collectively with a union composed by management and decision making employees. Federación de Maestros also has a liberty interest which

consist of the right to refuse to negotiate and bargain collectively with a union composed of supervisors and key personnel. The Act does not impose on petitioner a duty to negotiate with Federación Puertorriqueña, therefore any order requiring petitioner to bargain collectively with Federación Puertorriqueña de Trabajadores infringes Federación de Maestros liberty interests as defined by the United States Supreme Court in the opinion of Meyer v. Nebraska, supra, at page 399.

Once it is concluded that petitioner has a property as well as a liberty interest, the courts must employ the balancing analysis set forth in the opinion of Mathews v. Elridge, 424 U.S. 319, 335 (1976), in order to determine what process is due. The nature of the interest affected in the present case by the official action, and the procedure used which did not allow the intro-duction of evidence in the hearing, therefore increasing the risk tremendously of an erroneous decision, lead us to conclude that the process afforded to Federación de Maestros at the hearing before the

Labor Relations Board was not due. We must also point out that the cost of additional or substitute procedural safeguards was minimal and their value and contribution to the process invaluable. In the present case petitioner was deprived of its liberty and property interests without a due process of law. This, due to the fact that during the hearing at the Labor Relations Board the Hearing Examiner did not gave Federación de Maestros an opportunity to present evidence in order to prove that the Regional Representatives were supervisors, policy and decision making employees. From the Hearing Examiner's record clearly emerge at page eleven, see exhibit XVIII, that on numerous occasions during the hearing petitioner tried to present evidence in order to prove that the bargaining unit was not appropriate due to the fact that its members were supervisory, management and key personnel, but the Hearing Examiner did not allow them, making then, the Labor Relations Board, a determination about the appropriate bargaining unit without any evidence on the record.

The aforementioned actions by the Hearing Examiner and their subsequent convalidation by the Supreme Court of the Commonwealth of Puerto Rico deprived petitioner of their liberty and property interests without a due process of law, since it obliged Federación de Maestros to bargain collectively with a union formed by supervisors, management and decision making employees in contravention to sections 2(3), 2(11), 7 and 14(a) of the National Labor Relations Act, as amended, supra and the general doctrine enunciated by the National Labor Relations Board and the Supreme Court of the United States.

From the sources and arguments stated above it is clear that the Labor Relations Board cannot order, due to lack of jurisdiction, Federación de Maestros to negotiate and bargain collectively with Federación Puertorriqueña because the later is a union composed of management, supervisory, decision and policy making employees. The National Labor Relations Act, which preempts the field, in its pertinent sections more specifically section 14(a) does

not confer the Board jurisdiction to order an employer to bargain collectively with a union composed of managerial and supervisory personnel. It is also clear that petitioner was deprived of his property and liberty interests without a due process of law in violation of the Four-teenth Amendment of the Constitution of the United States due to the fact that the Official Examiner during the hearing before the Labor Relations Board did not allow Federación de Maestros the presentation of evidence, issuing then a determination about the appropriateness of the bargaining unit, in the present case Federación Puertorriqueña, without any evidence on the record. **CONCLUSION**

The Supreme Court of the Commonwealth of Puerto Rico erred in convalidating the Labor Relation Board's order which: 1) certified Federación Puertorriqueña de Trabajadores as the union representative of the management and decision making employees that occupied key positions at Federación Puertorriqueña; 2) ordered Federación de Maestros to negotiate and bargain collectively with Federación Puertorriqueña; 3)

deprived petitioner of a due process of law in violation to the Fourteenth Amendment of the Constitution of the United States.

From all the above it is clear that the Labor Relations Board decision and order concerning Federación de Maestros and the status of Federación Puertorriqueña as the exclusive bargaining representative of the Regional Representatives is erroneous. The Resolution of the Supreme Court for the Commonwealth of Puerto Rico convalidating the Labor Relations Board's decision and order is erroneous also, therefore it is requested that this court reverse and leave without effect both, the decision and order of the Labor Relations Board and the Resolution of the Supreme Court of the Commonwealth of Puerto Rico.

RESPECTFULLY SUBMITTED,

In San Juan, Puerto Rico this 13 day of January, 1994.

Godwin Aldarondo Girald

071

APPENDIX

EXHIBIT I Ruling of the Supreme court of the Commonwealth of Puerto Rico regarding the writ of Certiorari.....8, 17

EXHIBIT II Ruling of the Supreme Court of the Commonwealth of Puerto Rico regarding the First Motion for Reconsideration.....8, 17

EXHIBIT III Ruling of the Supreme Court of the Commonwealth of Puerto Rico regarding the Second Motion for Reconsideration.....8, 17

EXHIBIT IV Article VIII of Federación de Maestros rules and regulations which deals with the Executive Committee functions. 13, 18, 20, 23, 33

EXHIBIT V Announcement for job interviews for the position of Regional Representative or Organizer. 12, 13, 18, 20, 23, 33

EXHIBIT VI Job applications for the position of Regional Repre-

sentative or Organizer.
.....12, 13, 18, 20, 23, 33

EXHIBIT VII Proposal of Evaluation for the position of Regional Representative or Organizer.
.....12, 13, 18, 20, 23, 33

EXHIBIT VIII Letter sent to ex regional representatives regarding the organizational and political functions of the Regional Representatives or Organizers.
.....12, 13, 18, 20, 23, 33

EXHIBIT IX Stipulation between Federación de Maestros and Federación Puertorriqueña.....15

EXHIBIT X Decision and Certification of Representative.....15

EXHIBIT XI Decision and Order, October 31st, 1991.....15

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EXHIBIT XIII Judgment of the Puerto Rico Superior Court, San Juan Part,

December 2nd, 1992.....17

EXHIBIT XIV Notice of Judgment and Judgment of the Commonwealth of Puerto Rico, General Court of Justice, Appeals Court of the Commonwealth of Puerto Rico. 17

EXHIBIT XV Writ of Certiorari filed before the Supreme Court of the Commonwealth of Puerto Rico. 17

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EXHIBIT XVIII Puerto Rico Relations Board Hearing Examiner's Report. 18, 21, 37

EXHIBIT XIX Minutes of the January 29th, 1989, Executive Committee

meeting.....18, 23, 33

EXHIBIT XX Minutes of the April 17th, 1989, Executive Committee meeting. 18, 23, 33

EXHIBIT XXI Minutes of the November 23rd, 1989, Executive Committee Meeting.....18, 23, 33

EXHIBIT XXII Minutes of the February 3rd, 1990, Executive Committee meeting.....18, 23, 33

EXHIBIT XXIII Minutes of the December 3rd, 1990, Executive Committee meeting.....18, 23, 33

I

CERTIFIED TRANSLATION

Exhibit VIII

EXHIBIT I

IN THE PUERTO RICO SUPREME COURT

Puerto Rico Teachers
Federation

Plaintiff & Petitioner

vs.

No. CE-93-192
Certiorari

P.R. Labor Relations Board

Defendent & Respondent

RULING

San Juan, Puerto Rico, this 2nd day of July, 1993.

The writ of certiorari is denied.

The appealed judgment of the Puerto Rico Court of Appeals is essentially correct.

So ordered by the Court and so certifies the Chief Clerk. Associate Justice Fuster Berlingeri did not participate.

[Signature]
Francisco R. Agrait Lladó
Chief Clerk

[There is a rubber stamp which reads:]
NOTICED ON:
July 7 , 19 93
BY: *Andrea García*

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EXHIBIT II

Exhibit IX

IN THE PUERTO RICO SUPREME COURT

Puerto Rico Teachers
Federation

Plaintiff-Petitioner

vs. No. CE-93-192
Certiorari

P.R. Labor Relations Board

Defendent-Respondent

Special Summer Session formed by its Chief Justice, Associate Justice Negrón García and Associate Justices Hernández Denton and Alonso Alonso.

RULING

In San Juan, Puerto Rico, this 20th day of August, 1993.

Having examined the first motion for reconsideration, the Court denies same.

So ordered by the Court and so certifies the Chief Deputy Clerk.

/s/ Carmen [illegible] Cruz Rivera

Carmen Cruz

Chief Deputy Clerk

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EXHIBIT III

Exhibit X

IN THE PUERTO RICO SUPREME COURT

Puerto Rico Teachers
Federation

Plaintiff-Petitioner

v. No. CE-93-192

Certiorari

Puerto Rico Labor Relations
Board

Defendent-Respondent

Court Session composed of Chief Justice Andréu García
and Associate Justices Negrón García and
Hernández Denton

RULING

San Juan, Puerto Rico, this 17th day of September, 1993.

The second motion for reconsideration is denied.

Petitioner Puerto Rico Teachers Association is to abide by the ruling.

So ordered by the Court and so certifies the Chief Clerk.

[Signature]

Francisco R. Agrait Lladó

Chief Clerk

[There is a rubber stamp which reads:]

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United States Courts

NOTICED ON:

Sept. 20 , 19 93

BY: *Andrea García*

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EXHIBIT IV

Exhibit I

EXECUTIVE COMMITTEE FUNCTIONS

ARTICLE VIII

EXECUTIVE COMMITTEE

Section 1 - While the Board of Directors is not in session, the supreme authority of the Teachers Federation shall reside in the Executive Committee, subject to the Organization's Constitution and Regulations and the agreements of the Board of Directors, the Delegate Assembly and the General Assembly.

Section 2- The Executive Committee shall be comprised of eleven (11) members elected by the union rank and file. All shall work on a full-time basis.

a. Chairperson

b. Vice-Chair

c. Secretary-Treasurer

d. Secretary of Curriculum and Propaganda

e. Seven (7) Regional Representatives

Section 3- The Executive Committee shall be comprised of eleven (11) members. The four central directors shall be elected by direct secret ballot of the Federation membership and the seven (7) Regional Representatives by the Federation membership of their respective Educational Regions.

Section II — Functions of the Executive Committee

a. It shall be the executive organism of the Puerto Rico Teachers Federation.

b. It shall give a weekly report to the Board of Directors through the Chairperson, including the work performed by the Regional Secretaries and Representatives.

c. It shall carry out the agreements made by the Board of Directors, the Delegate Assembly and the General Assembly.

d. It shall see to the strict compliance with the rules and procedures stipulated in the

Puerto Rico Teachers Federation Constitution and Regulations.

e. It shall gather all the information relevant to the full performance of its functions through its permanent Secretariats.

f. It shall create a national work plan for the Organization, by integrating the various plans of the Secretariats. That plan must be submitted to the Local Unions one month in advance of being considered by the Board of Directors for its approval.

g. After the Local Union is provided with the information, it shall be authorized to initiate sanctions on members who commit acts of indiscipline, disloyalty, improper annulment of representation and acts which violate the statutes, purposes, provisions, growth and development of the Puerto Rico Teachers Federation.

h. It shall critique and engage in self-criticism concerning its own activities

and general condition of the Puerto Rico Teachers Federation.

i. At the request of any Federation member, it shall hold a hearing to settle cases of objection or conflict of interest within or before thirty (30) days from the time it is requested.

j. To work out a wage policy which is to be submitted to the Board of Directors for its approval.

k. It shall create the following work commissions:

1. National Sports and Recreation Commission

2. National Culture Commission

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EXHIBIT V

[*logo: PRTF*] **Puerto Rico Teachers Federation**

[address, etc.]

July 10, 1987

ANNOUNCEMENT FOR JOB INTERVIEWS

TO : WHOM IT MAY CONCERN

P.S.S.

FROM : RENAN SOTO SOTO, PRESIDENT

SUBJECT : ANNOUNCEMENT FOR JOB INTERVIEWS FOR ORGANIZATION & DEVELOPMENT REPRESENTATIVES (ORGANIZERS)

DEPARTMENT : ORGANIZATION & DEVELOPMENT

SUPERVISOR : DIRECTOR DEPARTMENT ORGANIZATION & DEVELOPMENT

NATURE OF THE POSITION

The Office of the President of the Teachers Federation shall supervise the functioning and work of the Organization & Development Representatives, who shall be under the direct supervision of the Department Director. He/she shall be in charge of an organizational section of

ANNOUNCEMENT FOR JOB INTERVIEW FOR ORGANIZERS

the PRTF. This is a position of trust of the Executive Committee.

DUTIES OF THE POSITION

1. He/she shall execute the organizational policy of the Teachers Federation.

2. Together with the Director of the Department of Organization & Development, he/she shall prepare his/her work plan on a monthly basis.

3. He/she shall cover a work section and specific daily goals to develop.

4. One of his/her primary functions shall be to organize the teachers in their work center (schools).

5. Permanent and primary tasks shall be recruitment of new Federation members for the organization and raising the inventory of contacts, in coordination with the directors.

6. He/she shall execute the Organization & Development plan:

a. He/she shall distribute materials,

b. He/she shall train and prepare the school contacts.

ANNOUNCEMENT FOR JOB INTERVIEW FOR ORGANIZERS

7. He/she shall establish daily, defined and quantitative goals in his/her work section.

8. He/she shall create organizational development plans for the locals in his/her area.

9. He/she shall put the organizational policy in practice in the schools under his/her charge.

10. He/she shall raise [the] inventory of school contacts.

11. He/she shall participate in plans for education of the membership in his/her area, districts and daily routes.

12. He/she shall receive complaints or cases and shall process it *[sic]* through the mechanisms estab- lished in the Department of Services.

13. He/she shall visit the amount of schools established on his daily route.

14. He/she shall present and discuss complaints and cases before the Director of Schools or other Representatives of the Department of Education within the established policy and when assigned to do so by the Director of the Department.

15. He/she shall organize and coordinate the seminars and activities for orienting teachers and/or directors.

16. He/she shall participate in the various activities of the Teachers Federation when so required.

17. He/she must stay in close contact and coordination with the Director of the Department of Organization & Development.

18. He/she must attend meetings of the Department assigned, as well as the meetings of the governing bodies of the Teachers Federation when his/her presence is required.

19. He/she shall be in charge of a local within the Systematic Organizational Plan.

20. He/she shall collaborate on those tasks and/or activities required of him/her.

REQUIREMENT[S] FOR THE POSITION

1. Teacher and Federation member.
2. General knowledge about the Teachers Federation.

2. General knowledge about the Teachers Federation.

3. Mastery of oral expression.

ANNOUNCEMENT FOR JOB INTERVIEW FOR ORGANIZERS

4. Availability of time.

5. Ability to work with groups.

6. Ability to work in an organized fashion.

7. Automobile in good condition.

8. Availability to travel through the towns in the assigned area and other areas on the Island.

WAGES : TO BE DISCUSSED

SCHEDULE : FLEXIBLE

BENEFITS : MEDICAL INSURANCE, AUTO AND DRIVER'S INSURANCE AND CHRISTMAS BONUS

INTERVIEWS: WEDNESDAY JULY 15, 1987 AT 10:00 AM AND 2:00 PM
THURSDAY JULY 16, 1987 AT 10:00 AM AND 2:00 PM

NOTE : Interested persons must report to the interview with their résumé and a letter of recommendation from the union local to which they belong.

rmv

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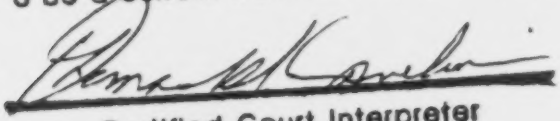

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EXHIBIT VI

[*logo: PRTF*] **Puerto Rico Teachers Federation**

[address, etc.]

February 17, 1990

MEMORANDUM

TO : PRTF ORGANIZERS

[Signature]

FROM : NEREIDA MARTES RODRIGUEZ,
DIRECTOR DEPARTMENT OF ORGANIZATION &
DEVELOPMENT

SUBJECT : JOB APPLICATIONS

As you are aware, this coming February 18th is the deadline for filing the job application with the Department of Education. Due to agreements concerning organizational policy

approved in the Delegate Assembly, we organizers shall terminate our positions on May 31, 1990.

In order to appear on [the] list of shifts in the PED, it is necessary that all non-permanent organizers file an application. The permanent organizers must notify the superintendent that they will be reporting to their positions in August.

rmv **Together We Struggle!**

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CERTIFIED TRANSLATION — EXHIBIT VII

March 8, 1988

International Woman's Day

PROPOSAL OF EVALUATION FOR ORGANIZATION AND DEVELOPMENT REPRESENTATIVES (ORGANIZERS)

The evaluation phase of organizers in the P.R.T.F. has been one which has historically given rise to intense debates resulting from the very nature of its functions and the various concepts, perceptions and interpretation[s] which are held in their (the organizers') regard. An example which bears mention is the criterion of an employee of trust for us to realize that questions would immediately arise of, why is he or she an employee of trust and who is an employee of trust?

In this proposal we hope to lay down the basis for an objective evaluation of this self-sacrificing group of organizers, in compliance with a responsibility which has

been delegated to us and taking into account this criterion of trust and still others which our functions entail.

I- REGULATORY ASPECTS:

1- The organizer shall be an employee of trust of the Executive Committee.

2- The local unions shall evaluate the work of the organizers.

II- FRAME OF REFERENCE:

1- In the past, the work of the organizers was evaluated on the basis of the functions established for the position (see Functions of organizer, August 3, 1981).

2- Subsequently, an Executive Committee evaluation document was designed which was extended to the local unions for them to evaluate our work as well. This, together with a self-evaluation by the organizer - 1982-83.

3- A much more accurate and objective mechanism of evaluation was formally established, consisting of an evaluation of the organizer's work by the immediate boss (secretary of organization), an evaluation by the locals and a self-evaluation. The difference with what was set forth in point #2 is that in the former it failed to discriminate between the Executive Committee and the immediate boss, [while] in #3 one thing *was* discriminated from the other.

We are going to fulfill the task entrusted to us in a fully responsible manner, so we are submitting before you the following evaluation documents. "We feel that the fairest and most objective way to evaluate our work is the one which is shown in the requirements established in terms of the organisms which we serve".

4- To reorganize the local unions.

5- Functional union education.

6- To develop mechanisms of collective struggle.

7- To work with school contacts.

8- To organize the teachers at their work centers.

9- To attend local meetings.

10- To receive, process and do follow-up on the cases in the Department of Services.

11- Delivery of propaganda, Action, What's Going On? etc.

CAPTION

E	G	S	D
3	2	1	0

E- Excellent

G- Good

S- Satisfactory

D- Deficient

IV- RECOMMENDATION:

1.- That this evaluation document be discussed as soon as possible and be subjected to amendments by the rest of the organizers, union locals and immediate boss, as the case may be. That the part pertaining to the Locals get down to them.

2- That the criterion of an Executive Committee employee of trust be expanded to include: its highest bodies of direction. Uniform criterion.

3- These evaluation documents shall be effective for one year after they are received, amended and accepted by all parties concerned.

V- REFERENCES:

1- Features for an organizational policy.

2- P.R.T.F. Staff Duties and Functions

3- Organizer's Functions

4- P.R.T.F. Regulations

CORPS OF ORGANIZERS

EVALUATION

COMMISSION

/s/ Iván Guzmán López

Iván Guzmán López-Org.

/s/ Pedro J. Cruz Ayala

Pedro Cruz- Org.

/s/Gilbert Rivera

Gilbert Rivera - Org.

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EXHIBIT VIII

FORM LETTER SENT TO

EX-ORGANIZERS

IVAN GUZMAN

ISMAEL GUADALUPE

PEDRO CRUZ

May 31, 1990

JOSE MARTINEZ

JOSE GOMEZ CUBERO

GILBERT RIVERA

As you are aware, the Delegate Assembly agreed to re-organize the structures of the Teachers Federation: by assigning organizational and political functions to the Regional Representative. It has been instituted as a requirement thereof, that said position be elected in the general elections of the Puerto Rico Teachers Federation. This forces us to permanently shut down the Department of Organization and Development.

You had the opportunity to participate in that debate and you likewise had the right and opportunity to run for the elective office, as did other organizers, but you did not do so.

On June 1st, 1990, the new Executive Committee and the new reorganization will begin functioning. Based on that, we have no choice but to dispense with your services effective today, May 31, 1990.

You are being paid your accrued annual leave and sick leave, Act 89 pay and Christmas bonus.

We hope that upon returning to the classroom, you will continue contributing to the struggle of the teaching profession and education in Puerto Rico.

We thank you for the services you have rendered to the Puerto Rico Teachers Federation.

There being nothing further, we remain,

Sincerely,

Renán Soto Soto, President

Puerto Rico Teachers Federation

RSS/mmr

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United States Courts

CERTIFIED TRANSLATION

EXHIBIT IX

EXHIBIT II

IN THE CASE OF:	/	CASE NO. P-88-10
	/	
PUERTO RICO TEACHERS	/	
FEDERATION	/	
	/	
-AND-	/	
	/	
PUERTO RICAN FEDERATION	/	
OF WORKERS	/	
	/	

S T I P U L A T I O N

COME NOW the above-captioned parties, who report the following agreements and stipulations:

1.- The Puerto Rico Teachers Federation recognizes the Puerto Rican Federation of Workers as the exclusive representative of the contracting unit of the Puerto Rico Teachers

Federation organizers, for the purposes defined in Act 130 Puerto Rico Labor Relations Board, of May 9, 1945, and as established by the Board itself on September 16, 1988, by resolution.

2.- The Puerto Rican Federation of Workers and the contracting unit of the organizers pledge not to exercise their right to collective bargaining in representation of the organizers, as long as certain conditions obtain, which are to be established between the parties on or before March 20, 1989, by making the maximum effort to achieve same.

3.- As part of the agreements, the Puerto Rican Federation of Workers shall withdraw the charges pending before the Labor Relations Board once the aforesaid conditions are established.

4.- So agree the parties, by signing this document.

In San Juan, Puerto Rico, this 8th day of March, 1989.

/s/ Ramón Fuentes

/s/ Renán [illegible]

RAMON FUENTES President Puerto

RENAN SOTO SOTO Rican Federation of Workers

President [Puerto Rico

Teachers'] Federation

- CERTIFIED -

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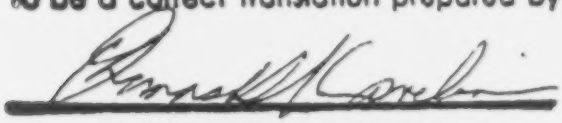

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EXHIBIT X

[official seal] Commonwealth of Puerto Rico

PUERTO RICO LABOR RELATIONS BOARD

[address, etc.]

[illegible rubric]

MAR 30 1989

IN THE CASE OF:

PUERTO RICO TEACHERS FEDERATION	* CASE NO. P-88-10 * D-89-1121
- and -	
PUERTO RICAN FEDERATION OF WORKERS	

****

BEFORE: Antonio Rodas Viñas, Esq.

Examining Official

APPEARANCES:

Angel Pérez Muñiz, Esq.

For the Employer

Alejandro Torres Rivera, Esq.

For the Union

DECISION AND CERTIFICATION OF REPRESENTATIVE

On July 1, 1988, the Puerto Rican Federation of Workers, hereinafter called Petitioner, filed before the Labor Relations Board, hereinafter called the Board, a Petition of Investigation and Certification of Represen-tative, in which it alleged that a controversy had arisen concerning the representation of all the Organization & Development Representatives used by the employer, the Puerto Rico Teachers Federation.

The Chairperson of the Board ordered elections held prior to the hearing, in accordance with the power vested in him by the Board's Article III, Section 6(a) of Regulation Number 2.

The elections were held on October 13, 1988, under the direction and supervision of the Board's Chief Examiner, Atty. Olga Iris Cortés Coriano. Participating in same was the Puerto Rican Federation of Workers, and the results, as shown in the Voting Check Sheet, a copy of which was supplied to the parties, were the following:

1. Number of Eligible Voters.....9
2. Valid votes counted.....7
3. Votes in favor of the Puerto Rican Federation of Workers...7
4. Votes against the participating union.....0
5. Votes challenged.....0
6. Invalid votes.....0
7. Votes left blank.....0

It is evident that Petitioner had a majority of the valid votes issued by the

workers of the employer, the Puerto Rico Teachers Federation.

A functionary of the Board's Investigations Division took steps to have the legal representative of the employer sign a "Post-election Recognition Agreement". The employer, in a communication dated August 23, 1988, informed the Board that it did not recognize petitioners as a contracting unit on the grounds stated therein.

The Board, after analyzing the case file, agreed to order the holding of a Public Hearing. This was held on March 8, 1989.

At the start the public hearing, the parties informed the Examining Official that they had reached an agreement by virtue of which the Puerto Rico Teachers Federation would recognize the Puerto Rican Federation of Workers as the exclusive representative of the

contracting unit of the Puerto Rico Teachers Federation's organizers, for the purposes defined in Act 130 of May 8, 1945, known as the Labor Relations Act.

1/ T.O., Pages 1 and 2

In view of all the above and in accordance with the authority conferred on the Puerto Rico Labor Relations Board in Article 5, Paragraph 3 of the Puerto Rico Labor Relations Act, and based on the results of the elections held on October 13, 1988, IT IS HEREBY CERTIFIED THAT:

The Puerto Rican Federation of Workers has been designated and elected by a majority of the employees used by the employer, Puerto Rico Teachers Federation, as their representative in the aforesaid suitable

unit. Pursuant to Article 5, Paragraph (1) of the Puerto Rico Labor Relations Act, the Puerto Rican Federation of Workers is the exclusive representative of the aforesaid workers, for purposes of collective bargaining in regard to types of pay, wages, working hours and other conditions of employment.

In San Juan, Puerto Rico, this 28th day of March, 1989.

[illegible signature]
Samuel E. de la Rosa Valencia,
President

/s/ Estanislao García Vázquez
Estanislau García Vázquez
Associate Member
[illegible signature]
Carlos Roca Rosselli

Associate Member

[There is a circular seal which reads:] PUERTO RICO LABOR RELATIONS BOARD / OFFICIAL SEAL

NOTICE

WE CERTIFY: That we have sent a copy of the instant Decision and Certification of Representative, by ordinary mail, to:

1.- Angel Pérez Muñiz, Esq.
PEREZ MUÑIZ, SANTIAGO-MELENDEZ
204 Domenech Ave.
Hato Rey, Puerto Rico 00918

2.- Puerto Rican Federation of Workers
516 Dresde Street
Puerto Nuevo, Puerto Rico 00920

In San Juan, Puerto Rico, this 29th day of March, 1989.

/s/ Ruth Santiago Santiago

Ruth Santiago Santiago

Assistant Secretary of the Board

[There is a circular seal which reads:] PUERTO RICO LABOR RELATIONS BOARD / OFFICIAL SEAL

- CERTIFIED -

o be a correct translation prepared by:

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United States Courts

CERTIFIED TRANSLATION

[official seal] Commonwealth of Puerto Rico

PUERTO RICO LABOR RELATIONS BOARD

[address, etc.]

Exhibit IV

IN THE CASE OF:	*	
	*	
PUERTO RICO TEACHERS	*	
FEDERATION (RESPONDENT)	*	
	*	
-AND-	*	CASE NO. CA-89-57
	*	D-91- 1193
PUERTO RICAN FEDERATION	*	
OF WORKERS (COMPLAINANT)	*	

Before: Agnes Maisonet de Marcano, Esq.

Administrative Judge

APPEARANCES:

Raúl Pérez Muñiz, Esq.

Raúl Santiago Meléndez, Esq.

For the Teachers Federation

Migdalia Adrover Rodríguez, Esq.

For the Public Interest

Mr. Ramón Fuentes

For the Puerto Rican Federation

of Workers

D E C I S I O N A N D O R D E R

On June 14, 1990, the Report of the Examining Official, Atty. Agnes Maisonet de Marcano, was issued. The same contains a recommendation to dismiss the complaint, even though she concludes that the respondent committed the refusal to bargain alleged,[1] since

---

[1] Under our Labor Relations Act, it constitutes an unlawful labor practice within the meaning of Article 8 (1) (d), 29 LPRA 69 (1) (d).

in her judgment, the complaining union is also liable *in solidum* for said unlawful conduct.[2]

On August 9, 1990, legal counsel for the Public Interest, Atty. Leticia Rodríguez García, filed a brief of Exceptions to the Report of the Examining Official, which was not answered by the employer.

We have reviewed the rulings issued in this case and they are hereby confirmed inasmuch as no prejudicial error whatever was committed.[3]

---

[2] Although not expressly stating so, this is an application of the doctrine of countercharge. Nevertheless, our law only contemplates the application thereof in the context of Article 8 (1) (f).

[3] With respect to the procedural aspect ruled upon by the Examining Official with relation to the entering of default, we adopt in their entirety the statements contained at pages 6-7 of the Report.

After analyzing the entire case file with the evidence submitted and the arguments of the parties, the Board adopts the conclusions of fact and the analysis through page 14 of the Report. We are likewise in agreement with what it states in the sense that:

> " There is no doubt whatever that the fundamental conditions demanded by the Act and case law for there to be a refusal to bargain have been fulfilled in this case."[4]

This is the essential conclusion of the case from which it necessarily becomes clear that the unlawful labor practice of which the respondent employer is accused did occur. We cannot be in agreement with the Examining Official when she recommends that, notwithstanding the foregoing, the complaint be dismissed. She bases her judgment on her

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[4] Report of the Examining Official, page 16.

appreciation that both parties assumed an attitude of bad faith in the bargaining process, colored by "marked antagonism". She concludes her Report by recommending that the parties be counselled to "carry out the collective bargaining free of quarrelling and hostilities . . ."[5]

Without doubt, collective bargaining is a dynamic, dual process, in which both parties give up and obtain rights, guarantees and benefits through offers and counter-offers. The agreement which they reach will govern their mutual relations for a period of time. For this reason, it is logical to affirm that negotiating in good faith is a reciprocal obligation. Nevertheless, under our Act the "refusal to negotiate" is an unlawful labor practice enacted against the employer alone.[6] Without going into

---

[5] Id., at page 17.

[6] In the Federal jurisdiction, Article 8 (b) (3) of the National Labor

considerations about the desirability or undesirability of amending our statute in this aspect, the truth is that the conclusion is inescapable that in this case the employer committed the unlawful practice it is accused of. It is our judgment that even though there was an unlawful practice of refusal to bargain on the part of the workers' organizations, and that it had been committed by the union in this case, it would not prevent us from issuing an order to the respondent employee to bargain in good faith.

As it is clearly set forth in the Exceptions to the Report:

> " This refusal by the employer appears to be a withdrawal of the latter's recognition, a few days after it was made, violating the

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Relations Act contains the refusal to bargain as an unlawful labor practice by labor organizations.

> state of law and causing . . . instability in the labor field and lack of trust in the institutional procedures established to guarantee the practice of collective bargaining."[7]

The record is glaringly clear that the Teachers Federation, apparently regretting that it had subscribed the Stipulation wherein it recognized the above-captioned union for the ends and purposes of our Act, changed its course of action and refused to bargain collectively with the organizers' representatives. Hence, it ignored the letters from the Union,[8] and its

---

[7] Exceptions to the Examining Official's Report, p. 5.

[8] We agree with the Examining Official in the sense that even though the letters from the union do not comply with technical requirements, the truth is that they served their purpose of indicating

President adduced that he had no authority to negotiate a collective bargaining agreement.[9] It is therefore inescapable to conclude that an unlawful labor practice was committed, which must be remedied in accordance with the provisions of our Act, thus fostering industrial peace, a cardinal principle in labor-management relations.

C O N C L U S I O N S O F L A W

I. Respondent:

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the desire to bargain, including an a g r e e m e n t

(continued...)

[8](...continued)
proposal. The employer, if it wished to comply with its legal duty, could have bargained.

[9] T. O. pages 59, 60, 77, 78.

The Puerto Rico Teachers Federation is an entity which engages in organizing teachers by utilizing employees, and constitutes an employer within the meaning of Article 2 (2) of the Act.

II. Complainant:

The Puerto Rican Federation of Workers is an entity which engages in representing employees before their employee, through collective bargaining, constituting a labor organization within the meaning of Article 2 (10) of the Act.

III. The Unlawful Labor Practice:

By refusing to bargain collectively with the "organizers'" exclusive representative, the Puerto Rico Teachers Federation committed an unlawful labor practice pursuant to the provisions of Article 8 (1) (d) of the Act.

Pursuant to the provisions of Article 9 (1) (b) of the Act and by virtue of the conclusions

of fact and law in the above-captioned case, we issue the following

O R D E R

The Puerto Rico Teachers Federation, its agents, officers, successors and assigns must:

1. Cease and desist from refusing to negotiate a collective bargaining agreement with the Puerto Rican Federation of Workers, at the latter's request.

2. Carry out the following affirmative actions to help fulfill the purposes of the Act:

a. To bargain collectively with the Puerto Rican Federation of Workers, at the latter's request, concerning wages and working conditions for employees in the suitable unit certified by this Board in Decision No. 89-1121.

b. To post in places visible to its employees, for a term of thirty (30) consecutive days, copies of the "Notice to

All Our Employees" which is attached to the instant Decision and Order.

c. To report to the Chairperson of the Board, within fifteen (15) days after notice, the measures taken to comply with the orders herein.

Pursuant to the provisions of Section 3.15 of Act 170 (Uniform Administrative Procedure) of August 12, 1988, as amended, the party adversely affected by the instant Decision and Order may file a Motion for Reconsideration within the term of twenty (20) days from the date on which notice is filed.

In San Juan, Puerto Rico, this 31st day of October, 1991.

/s/ S. de la Rosa

Samuel E. de la Rosa Valencia, Esq.

Chairperson

/s/ Estanislao García Vázquez

Estanislau García Vázquez

Associate Member

N O T I C E

I certify that a copy of the instant Decision and Order was sent this day by certified mail to:

1. Angel Raúl Pérez-Muñiz, Esq.
PEREZ MUÑIZ & SANTIAGO MELENDEZ LAW OFFICES
204 Domenech Ave.
Hato Rey, Puerto Rico 00918

and by ordinary mail to:

2. P.R. Teachers Federation
1572 Ponce de León
Caribe Development
Río Piedras, Puerto Rico 00927

3. Puerto Rican Workers' Federation
516 Dresde Street
Puerto Nuevo, Puerto Rico 00920

4. Leticia Rodríguez, Esq.
Director, Legal Division
Puerto Rico Labor Relations
Board (hand-delivered)

In San Juan, Puerto Rico, October 31, 1991.

/s/ Leonor Rodríguez Rodríguez

Acting Secretary of the Board

[A circular seal reads:] PUERTO RICO LABOR RELATIONS BOARD / OFFICIAL SEAL

NOTICE TO OUR EMPLOYEES

In compliance with a Decision and Order of the Puerto Rico Labor Relations Board and in order to carry out the policy of the Puerto Rico Labor Relations Act, WE ARE NOTIFYING ALL OF OUR EMPLOYEES THAT:

WE, The Puerto Rico Teachers Federation, our agents, officers, successors and assigns:

1. Shall cease and desist from refusing to bargain collectively with the Puerto Rican Federation of Workers.

2. We shall bargain collectively with the Puerto Rican Federation of Workers, at the latter's request, concerning wages and working conditions for the employees in the suitable unit certified by the Board in Decision and Order No. 89-1121.

PUERTO RICO TEACHERS FEDERATION

By: _____

_____

Representative

Title

Date: _____

_____

_____

This Notice must remain posed in places visible to the employees for a period no less than thirty (30) consecutive days and must in no way be altered, modified or covered.

- CERTIFIED -

to be a correct translation prepared by

Certified Court Interpreter
Administrative Office of the
United States Courts

CERTIFIED TRANSLATION

EXHIBIT XII

[official seal] Commonwealth of Puerto Rico

PUERTO RICO LABOR RELATIONS BOARD

[address, etc.]

Exhibit V

IN THE CASE OF:	*	
PUERTO RICO TEACHERS	*	
FEDERATION (RESPONDENT)	*	
-AND-	*	CASE NO. CA-89-57
	*	D-91-1201
PUERTO RICAN FEDERATION	*	
OF WORKERS (COMPLAINANT)	*	

Before: Agnes Maisonet de Marcano, Esq.

Administrative Judge

APPEARANCES:

Raúl Pérez Muñiz, Esq.

Raúl Santiago Meléndez, Esq.

For the Teachers Federation

Migdalia Adrover Rodríguez, Esq.

For the Public Interest

Mr. Ramón Fuentes

For the Puerto Rican Federation

of Workers

D E C I S I O N A N D O R D E R

On June 14, 1990, the Report of the Examining Official, Atty. Agnes Maisonet de Marcano, was issued. The same contains a recommendation to dismiss the complaint, even though she concludes that the respondent committed the refusal to bargain alleged,[1] since

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[1] Under our Labor Relations Act, it constitutes an unlawful labor practice within the meaning of Article 8 (1) (d), 29 LPRA 69 (1) (d).

in her judgment, the complaining union is also liable *in solidum* for said unlawful conduct.[2]

On August 9, 1990, legal counsel for the Public Interest, Atty. Leticia Rodríguez García, filed a brief of Exceptions to the Report of the Examining Official, which was not answered by the employer.

We have reviewed the rulings issued in this case and they are hereby confirmed inasmuch as no prejudicial error whatever was committed.[3]

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[2] Although not expressly stating so, this is an application of the doctrine of countercharge. Nevertheless, our law only contemplates the application thereof in the context of Article 8 (1) (f).

[3] With respect to the procedural aspect ruled upon by the Examining Official with relation to the entering of default, we

After analyzing the entire case file with the evidence submitted and the arguments of the parties, the Board adopts the conclusions of fact and the analysis through page 14 of the Report. We are likewise in agreement with what it states in the sense that:

> " There is no doubt whatever that the fundamental conditions demanded by the Act and case law for there to be a refusal to bargain have been fulfilled in this case."[4]

This is the essential conclusion of the case from which it necessarily becomes clear that the unlawful labor practice of which the

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[12](...continued)

adopt in their entirety the statements contained at pages 6-7 of the Report.

[4] Report of the Examining Official, page 16.

respondent employer is accused did occur. We cannot be in agreement with the Examining Official when she recommends that, notwithstanding the foregoing, the complaint be dismissed. She bases her judgment on her appreciation that both parties assumed an attitude of bad faith in the bargaining process, colored by "marked antagonism". She concludes her Report by recommending that the parties be counselled to "carry out the collective bargaining free of quarrelling and hostilities . . ."[5]

Without doubt, collective bargaining is a dynamic, dual process, in which both parties give up and obtain rights, guarantees and benefits through offers and counter-offers. The agreement which they reach will govern their mutual relations for a period of time. For this reason, it is logical to affirm that negotiating

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[5] Id., at page 17.

in good faith is a reciprocal obligation. Nevertheless, under our Act the "refusal to negotiate" is an unlawful labor practice enacted against the employer alone.[6] Without going into considerations about the desirability or undesirability of amending our statute in this aspect, the truth is that the conclusion is inescapable that in this case the employer committed the unlawful practice it is accused of. It is our judgment that even though there was an unlawful practice of refusal to bargain on the part of the workers' organizations, and that it had been committed by the union in this case, it would not prevent us from issuing an order to the respondent employee to bargain in good faith.

---

[6] In the Federal jurisdiction, Article 8 (b) (3) of the National Labor Relations Act contains

As is clearly set forth in the Exceptions to the Report:

> "This refusal by the employer appears to be a withdrawal of the latter's recognition, a few days after it was made, violating the state of law and causing . . . instability in the labor field and lack of trust in the institutional procedures established to guarantee the practice of collective bargaining."[7]

The record is glaringly clear that the Teachers Federation, apparently regretting that it had subscribed the Stipulation wherein it recognized the above-captioned union for the ends and purposes of our Act, changed its course of action and refused to bargain collectively with the organizers' representatives. Hence, it

---

[7] Exceptions to the Examining Official's Report, p. 5.

ignored the letters from the Union,[8] and its President adduced that he had no authority to negotiate a collective bargaining agreement.[9] It is therefore inescapable to conclude that an unlawful labor practice was committed, which must be remedied in accordance with the provisions of our Act, thus fostering industrial peace, a cardinal principle in labor-management relations.

---

[8] We agree with the Examining Official in the sense that even though the letters from the union do not comply with technical requirements, the truth is that they served their purpose of indicating the desire to bargain, including an agreement proposal. The employer, if it wished to comply with its legal duty, could have bargained.

[9] T. O. pages 59, 60, 77, 78.

C O N C L U S I O N S O F L A W

I. Respondent:

The Puerto Rico Teachers Federation is an entity which engages in organizing teachers by utilizing employees, and constitutes an employer within the meaning of Article 2 (2) of the Act.

II. Complainant:

The Puerto Rican Federation of Workers is an entity which engages in representing employees before their employee, through collective bargaining, constituting a labor organization within the meaning of Article 2 (10) of the Act.

III. The Unlawful Labor Practice:

By refusing to bargain collectively with the "organizers'" exclusive representative, the Puerto Rico Teachers Federation committed an

unlawful labor practice pursuant to the provisions of Article 8 (1) (d) of the Act.

Pursuant to the provisions of Article 9 (1) (b) of the Act and by virtue of the conclusions of fact and law in the above-captioned case, we issue the following

O R D E R

The Puerto Rico Teachers Federation, its agents,
officers, successors and assigns must:

1. Cease and desist from refusing to negotiate a collective bargaining agreement with the Puerto Rican Federation of Workers, at the latter's request.

2. Carry out the following affirmative actions to help fulfill the purposes of the Act:

a. To bargain collectively with the Puerto Rican Federation of Workers, at the latter's request, concerning wages and working conditions for employees in the

suitable unit certified by this Board in Decision No. 89-1121.

b. To post in places visible to its employees, for a term of thirty (30) consecutive days, copies of the "Notice to All Our Employees" which is attached to the instant Decision and Order.

c. To report to the Chairperson of the Board, within fifteen (15) days after notice, the measures taken to comply with the orders herein.

Pursuant to the provisions of Section 3.15 of Act 170 (Uniform Administrative Procedure) of August 12, 1988, as amended, the party adversely affected by the instant Decision and Order may file a Motion for Reconsideration within the term of twenty (20) days from the date on which notice is filed.

In San Juan, Puerto Rico, this 5th day of March, 1992.

/s/ S. de la Rosa

Samuel E. de la Rosa Valencia, Esq.

Chairperson

/s/ Estanislao García Vázquez

Estanislau García Vázquez

Associate Member

N O T I C E

I certify that a copy of the instant Decision and Order was sent this day by certified mail to:

1. Angel Raúl Pérez-Muñiz, Esq.

PEREZ MUÑIZ & SANTIAGO MELENDEZ LAW OFFICES

204 Domenech Ave.

Hato Rey, Puerto Rico 00918

and by ordinary mail to:

2. P.R. Teachers Federation

1572 Ponce de León

Caribe Development

Río Piedras, Puerto Rico 00927

3. Puerto Rican Workers' Federation
516 Dresde Street
Puerto Nuevo, Puerto Rico 00920

4. Leticia Rodríguez, Esq.
Director, Legal Division
Puerto Rico Labor Relations
Board (hand-delivered)

In San Juan, Puerto Rico, October 31, 1991.

/s/ *Leonor Rodríguez Rodríguez*
Acting Secretary of the Board

NOTICE TO OUR EMPLOYEES

In compliance with a Decision and Order of the Puerto Rico Labor Relations Board and in order to carry out the policy of the Puerto Rico Labor Relations Act, WE ARE NOTIFYING ALL OF OUR EMPLOYEES THAT:

WE, The Puerto Rico Teachers Federation, our agents, officers, successors and assigns:

1. Shall cease and desist from refusing to bargain collectively with the Puerto Rican Federation of Workers.

2. We shall bargain collectively with the Puerto Rican Federation of Workers, at the latter's request, concerning wages and working conditions for the employees in the suitable unit certified by the Board in Decision and Order No. 89-1121.

PUERTO RICO TEACHERS FEDERATION

By: _____

_____

Representative

Title

Date: _____

_____

_____

This Notice must remain posed in places visible to the employees for a period no less than thirty (30) consecutive days and must in no way be altered, modified or covered.

- CERTIFIED -

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Administrative Office of the
United States Courts

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EXHIBIT VI

EXHIBIT XIII

IN THE PUERTO RICO SUPERIOR COURT

SAN JUAN PART

PUERTO RICO LABOR RELATIONS BOARD	FILE NO. KAC92-(901)
Petitioner	
vs.	IN RE:
PUERTO RICO TEACHERS FEDERATION	PETITION TO DECISION AND
Defendant	

JUDGMENT

Judgment is entered enforcing Decision and Order No. D-92-1201 in Case CA 89-57, issued on March 5, 1992 by the Labor Relations Board against the Puerto Rico Teachers Federation,

which must observe strict compliance with the provisions of the Order. They are warned of the legal mandate that non-compliance with the provisions herein shall constitute contempt of this Court.

In certain union elections the Puerto Rican Federation of Workers (PFOW) obtained a majority of the votes of the representatives of organization and development of the Puerto Rico Teachers Federation (PRTF). Faced with the initial refusal by the Teachers Federation to recognize and bargain with the PFOW as the exclusive representative of the employees concerned, adducing that the "organizers" of the Teachers Federation are employees who are intimately linked to managerial interest, which places them outside the definition of "employee" contained in the Puerto Rico Labor Relations Act, the Labor Relations Board held a Public Hearing. Once the hearing had gotten underway, the PFOW and the Teachers Federation agreed on

and submitted a stipulation by virtue of which the Teachers Federation recognized the PFOW as the exclusive representative of the contracting unit of the organizers of the Puerto Rico Teachers Federation for purposes of collective bargaining.

The stipulation provides as follows:

STIPULATION

Come now the above-captioned parties, who report the following agreements and stipulations:

1. The Puerto Rico Teachers Federation recognizes the Puerto Rican Federation of Workers as the exclusive representative of the contracting unit of the organizers of the Puerto Rico Teachers Federation, for the purposes defined in Act 130 Puerto Rico Labor Relations Board, of May 9, 1945, and according to the

Board itself, it was established on September 16, 1988, by resolution.

2. The Puerto Rican Federation of Workers and the contracting Unit of the organizers pledge not to exercise their right to collective bargaining in representation of the organizers, as long as certain conditions obtain, which are to be established between the parties on or before March 20, 1989, by making the maximum effort to achieve same.

3. As part of the agreements, the Puerto Rican Federation of Workers shall withdraw the charges pending before the Labor Relations board once the aforesaid conditions are established.

4. So agree the parties, having signed this document.

In San Juan, Puerto Rico, this 8th day of March, 1989.

RAMON FUENTES, President
Puerto Rican Federation of Workers

RENAN SOTO, President
Puerto Rico Teachers' Federation

On October 13, 1988, after studying and considering the stipulation, the Labor Relations Board certified the PFOW as the representative of the employees who comprise the suitable unit ("all the representatives of organization and development utilized by the Puerto Rico Teachers Federation"). The Board then closed and filed the case concerning representation on March 28, 1989.

Subsequently, after the PFOW had already been certified, the parties met to discuss the conditions alluded to in the above-transcribed stipulation. The meetings were not fruitful and the conditions did not obtain which, had they been achieved, bound the PFOW not to exercise its right to bargain collectively. For that reason, the PFOW required the Teachers Federation to bargain in the interest of the components of the unit. The Teachers Federation refused to negotiate, adducing that it was not authorized to bargain collectively regarding working terms and conditions of its "organizers" inasmuch as the latter had a conflict of interest in their function as "unionized employee" because they were intimately linked to management. In the face of the refusal by the Teachers Federation to negotiate, the PFOW once more petitioned for the intervention of the Board, which, following the necessary investigation, issued a complaint against the

Puerto Rico Teachers Federation for unlawful practice.

Following the proceedings and a report by an examining official, whose recommendations it did not follow, the Labor Relations Board concluded that the employee committed the unlawful practice of refusal to bargain and issued orders against the Teachers Federation to cease and desist from refusing to negotiate a collective bargaining agreement with the PFOW and, affirmatively, ordered it to negotiate a collective bargaining agreement. In the face of the non-compliance with the order by the Teachers Federation, the Board petitioned this Court to enforce the Decision and Order against the Teachers Federation.

In it's opposition to the Board's petition, the Teachers Federation holds that the "organizers" of the Federation are not entitled to constitute a labor union and to negotiate a collective bargaining agreement because due to

the complex and broad nature of their functions, their independence from central supervision and independence of judgment, the confidential nature of their assignment and functions, and because they are considered and treated as employees of trust, they have a conflict of interest in their functions as a "unionized employee" because they are intimately linked to management, and are management itself, wherefor they are excluded from the term "employee" in the Labor Relations Act.

As an element of opposition, the Teachers Federation adduces additionally that it was deprived of presenting evidence before the Board concerning the exclusion of the "organizers" from the Labor Relations Act and the unsuitableness of the unit. It holds, moreover, that this controversy, concerning whether the "organizers", by virtue of their functions, may or may not belong to the labor union, was not ruled upon by the Board.

On the latter subject, the Teachers Federation is correct. The controversy was not ruled upon by the Board. It was ruled upon by the parties themselves in the settlement stipulation which was transcribed above in its entirety, wherefor it was not necessary to present evidence.

The stipulation of this case constitutes a settlement which is, in turn, a contract by which the parties, supposing that the litigious issue is doubtful or because they entertain doubts about their respective rights, each one giving, promising or withholding something, avoid the provocation of a lawsuit or put an end (as they did before the [Labor] Relations Board) to the one they had started. As such, the settlement stipulation in this case recognizes rights and had the scope of adjudication of such rights, implying a formal abandonment of any contention contrary thereto. Once the settlement stipulation was approved, as, in

effect, it was approved by the Board, it binds the parties and those whom they represent. In binding the parties, the settlement stipulation contract has the effect of res judicata. (See Articles 1709, 1714 and 1715 of the Civil Code; 31 LPRA Secs. 4821, 4826 and 4827; Negrón Rivera v. Bonilla, Ex parte, 120 DPR 61, 74; Sucn. Román v. Shelga Corp., 111 DPR 782, 787; P.R. Glase Corp. v. Tribunal Superior, 103 DPR 223, 230; Vélez Torres, José Ramos, Curso de Derecho Civil, Derecho de Contratos, Tome IV, Vol. II, Pub. 1990, Chapter XIII, pp. 495-507).

Do words not have sense? Is it not to make things clear that agreements, contracts, concessions and permits are put down in writing? (See Texaco Inc. v. Secretario de Obras Públicas, 85 DPR 712, 718). The Teachers Federation as an employer, recognized, pledged and bound itself with the PFOW "as the exclusive representative of the contracting unit of its organizers" for all the purposes of the Puerto

Rico Labor Relations Act. In so doing, it neither placed nor established any conditions. It made a categorical and absolute recognition.

For its part, and in the face of that recognition by the Teachers Federation, the PFOW pledged not to exercise its right to bargain collectively in representation of the organizers, "as long as certain conditions obtain..." This commitment not to bargain made by the PFOW, already accepted and recognized as the organizers' representative, constituted a conditional obligation which was extinguished when the event or realization of what was expected did not take place. When its conditional obligation was extinguished, the PFOW was from that point on free to exercise its right to bargain collectively with the Teachers Federation, a right which is consonant with and emerges from the categorical and absolute recognition which the Teachers Federation had

given it as the exclusive representative of its "organizers".

When the recognition by the Teachers Federation of the PFOW as the representative of its "organizers" pledged or linked it to the now unconditional right of the PFOW to have the Teachers Federation, as an employer, bargain with it in a collective bargaining agreement, and when it refused to so negotiate, the Labor Relations Board decided and acted correctly in finding that the Teachers Federation had committed an unlawful labor practice and in ordering it to bargain collectively. The Puerto Rico Teachers Federation must comply with that order which, in effect, orders it to comply with a commitment or contract which it had validly entered into with the Puerto Rican Federation of Workers.

TO BE RECORDED AND NOTICED.

Given in San Juan, Puerto Rico, this 2nd day of December, 1992.

(sgd) *FE Cumpiano*

FLAVIO E. CUMPIANO

JUDGE

I CERTIFY:

Paulita Santiago Cartagena

Chief Clerk

By: *[Signature]*

Deputy Clerk

- CERTIFIED -

To be a correct translation prepared by

Certified Court Interpreter
Administrative Office of the
United States Courts

CERTIFIED TRANSLATION —

EXHIBIT XIV

EXHIBIT VII

COMMONWEALTH OF PUERTO RICO

P. 01 GENERAL COURT OF JUSTICE

APPEALS COURT NORTH SECTION

UNITED STATES OF AMERICA,]

THE PRESIDENT OF THE UNITED] SS:

STATES COMMONWEALTH OF P.R.]

P. R. LABOR RELAT.

BOARD RECD CASE NO: SNCE93-0034

MOVANT REF. NO: K AC92-0397

VS.

P. R. TEACHERS FEDERATION RECT CERTIORARI

RESPONDENT MATERIAL

ALDARONDO GIRALD GODWIN, ESQ.

LEMANS CONDOMINIUM

SUITE 803 602 MUÑOZ RIVERA

HATO REY PR 00918

NOTICE OF JUDGMENT

THE UNDERSIGNED CLERK HEREBY NOTIFIES YOU THAT THIS COURT HAS ENTERED JUDGMENT IN THE

ABOVE-CAPTIONED CASE DATED APRIL 30 1993 , WHICH HAS BEEN DULY RECORDED AND PLACED IN THE CASE FILE OF THIS CASE, WHERE YOU MAY LEARN IN DETAIL OF THE TERMS THEREOF.

AND, AS YOU ARE OR REPRESENT THE PARTY ADVERSELY AFFECTED BY THE JUDGMENT, ON WHICH YOU MAY FILE AN APPEAL, I AM ADDRESSING THIS NOTICE TO YOU, AND HAVE PLACED A COPY THEREOF IN THE CASE FILE DATED APRIL 30, 1993 .

RODRIGUEZ GARCIA LETICIA

P. O. BOX 14427 EST. BARRIO OBRERO

SANTURCE, PR 00916

SAN JUAN, PUERTO RICO, ON 05 MAY 1993

YOLANDA TOYOS OLASCOAGA

CHIEF CLERK

[initials]

BY: ELGA PEREZ

DEPUTY CLERK

- CERTIFIED - to be a correct translation prepared by: Certified Court Interpreter Administrative Office of the United States Courts

O.A.T. 704-NOTICE OF JUDGMENT

CERTIFIED TRANSLATION

IN THE PUERTO RICO COURT
OF APPEALS NORTH SECTION

PUERTO RICO LABOR RELATIONS BOARD Appellee	Certiorari originating in SNCE-93-0034	the Superior Court San Juan Part
v.		
PUERTO RICO TEACHERS' FEDERATION Petitioner		Administrative Review, Labor Law
		KAC92-0937

Panel formed by its chief judge, Judge Sánchez Martínez, and Judges Ramos Buonomo and Segarra Olivero.

Judge Sánchez Martínez, writing for the Court.

JUDGMENT

San Juan, Puerto Rico, on April 30, 1993.

Through this writ of certiorari the Teachers Federation prays that we set aside the judgment entered by the Superior Court, San Juan Part (Hon. Flavio E. Cumpiano, J.), which enforces the Labor Relations Board's decision ordering petitioner Puerto Rico Teachers Federation to recognize the Puerto Rican Federation of Workers as the exclusive representative of its unit of organizers, and, in addition, to initiate the process of collective bargaining.

- I -

On July 1, 1988, the Puerto Rican Federation of Workers (the union) filed with the Labor Relations Board (the Board) a petition for

investigation and certification of representative in which it alleged that a controversy had arisen concerning the representation of the employees who are organizers for the Puerto Rico Teachers Federation (the employer) by a suitable unit for collective bargaining.([1]) It requested the Board to rule on the controversy following an investigation.

To that effect, the chairperson of the Board ordered elections to be held prior to the hearing required pursuant to Art. 5 of the Labor Relations Act, Act No. 130 of May 8, 1945, as amended, 29 L.P.R.A. sec. 66(3), and Art. III, Sec. 6(a) of Regulation No. 2 of the Labor Relations Board. As a result of said elections,

---

[1] The petitioned unit included "all the representatives of organization and development utilized by the Puerto Rico Teachers Federation" (Appendix, p. 97).

the union won the majority of valid votes issued by the employees of the Teachers Federation entitled to vote.

Following the elections, the Investigations Division of the Labor Relations Board took steps to have the employer recognize the new union organization as the exclusive representative of the employees concerned for purposes of collective bargaining. The employer refused, feeling that "the latter are employees who are intimately linked to managerial interest, which places them outside the definition of 'employee' contained in the Puerto Rico Labor Relations Act (Appendix, p. 98).

In the face of this, then, the Board ordered the holding of a public hearing, which took place on March 8, 1989. Once the hearing had gotten underway, the parties reported to the examining official that they had arrived at an agreement by written stipulation. Said

stipulation reads as follows (Writ of certiorari, p. 3):

STIPULATION

COME NOW the above-captioned parties, who report the following agreements and stipulations:

1. The Puerto Rico Teachers Federation recognizes the Puerto Rican Federation of Workers as the exclusive representative of the contracting unit of the organizers of the Puerto Rico Teachers Federation, for the purposes defined in Act 130 Puerto Rico Labor Relations Board, of May 9, 1945, and according to the Board itself,

it was established on September 16, 1988, by resolution.

2. The Puerto Rican Federation of Workers and the contracting Unit of the organizers pledge not to exercise their right to collective bargaining in representation of the organizers, as long as certain conditions obtain, which are to be established between the parties on or before March 20, 1989, by making the maximum effort to achieve same.

3. As part of the agreements, the Puerto Rican Federation of Workers shall

withdraw the charges pending before the Labor Relations board once the aforesaid conditions are established.

4. So agree the parties, having signed this document.

In San Juan, Puerto Rico, this 8th day of March, 1989.

(Sgd) RAMON FUENTES, President
Puerto Rican Federation of Workers
(Sgd) RENAN SOTO SOTO
President Puerto Rico
Teachers Federation

On the basis of this stipulation, the Labor Relations Board issued a Certification of Representative on March 20, 1989, in favor of

the Puerto Rican Federation of Workers, in which it designated it as the exclusive representative of the aforesaid employees.

On that same day, pursuant to the provisions of the second clause in the said stipulation, the parties met and the union delivered a proposal to the employer in which it included the specific conditions on which its waiver of collective bargaining would rest. Nevertheless, the proposed conditions were not accepted by the employer, for which reason a second meeting was agreed upon for March 31, 1989. On this occasion, the union served notice through a letter to Mr. Renán Soto, the President of the Teachers Federation, (the employer) of its intention to initiate the processes of collective bargaining. Mr. Soto declined to negotiate a collective bargaining agreement, alleging that he was not authorized to do so. In like manner, the union

subsequently requested the employer on several occasions to initiate the processes of collective bargaining without any results.

Faced with this situation, the union filed a grievance against the employer before the Labor Relations Board. After several hearings, the Board concluded that the employer had committed an unlawful labor practice by refusing to bargain collectively with the union and issued an order against it, to cease and desist from said practice and to negotiate a collective bargaining agreement. (Appendix, p. 93.)

In the face of the non-compliance with the Board's order, the latter went to the Superior Court, San Juan Part, for said forum to enforce its order. After the necessary proceedings, the Superior Court entered the judgment which is the subject of the instant

appeal, enforcing the decision and order of the Board.

The employer (Teachers Federation) is asserting before us that the appellee court committed an error, (1) "by confirming and enforcing a decision of the Labor Relations Board issued without jurisdiction, by finding petitioner guilty of an unlawful practice and ordering it to bargain with a group of employees who are excluded from the law" and (2) "by enforcing an order of the Board which is contrary to public and national [sic, federal] labor policy, as the field is occupied by the National Labor Relations Act".

In its argument, petitioner states that because of the close relationship between the two assertions of error, it shall discuss them jointly. (Writ of certiorari, p. 9.) For the same reasons, then, we shall discuss both assertions of error jointly, it being understood

that the provisions of law concerning the controversies before our consideration are virtually identical in the local and federal jurisdictions.([2])

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[2] In Beaunit of Puerto Rico v. J.R.T., 93 D.P.R. 509 (1966), the Court explained:

> ...it is not necessary for us to rule on the instant case if in deciding about the commission of the unlawful practice imputed, the Puerto Rico Labor Relations Board must apply federal or local labor law, for as to the specific point we are considering, both agree... Id., at p. 513.

- I -

The employer contends that the Labor Relations Board lacks the authority to order it to bargain collectively with the union, since the Labor Relations Act, already cited, expressly provides, in its Art. 4 (29 L.P.R.A. sec. 65), the following:

> The employees are entitled, among other things, to organize among themselves; to constitute, affiliate with or assist labor organizations; to bargain collectively through representatives of their choosing; and to engage in concerted activities aimed at collective bargaining or some other purpose of mutual assistance or protection. (Emphasis supplied.)

For its part, Art. 2 of the aforecited law, 29 L.P.R.A. sec. 63, provides in its pertinent part:

> The term "employee" shall include any employee, and shall not be limited to the employees of one employer in particular, unless the law explicitly provides otherwise, and shall include any individual whose work has ceased as a consequence of, or in relation to, any labor dispute, or owing to any unlawful labor practice, but shall not include any individual employed by his/her parents or spouse. The term shall not include executives or supervisors. (Emphasis supplied).

Petitioner alleges that, in accordance with the functions performed by its employees

who are organizers, they are not included in the foregoing definition of employee, and that, therefore, from the start, the Board was barred from certifying the Federation of Workers as the exclusive representative of same. As a consequence of this, it was likewise barred from ordering the collective bargaining. It is their contention that the parties in a dispute may not confer jurisdiction on the Labor Relations Board through a private agreement, since their authority comes exclusively from the aforesaid Labor Relations Act.([3])

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[3] We refer to the doctrine of "non-delegation", which forms an essential part of Administrative Law, based, in turn, on the doctrine of separation of powers. In order to uphold said doctrine, the legal rule was adopted which establishes that the authority of administrative agencies to adopt regulations, as well as to

In other words, petitioner is attempting to contest the validity of the stipulation which it itself subscribed, by alleging that, while it was with its consent, it was invalid from the start because it was prohibited by law. Petitioner is incorrect.

A very similar situation was presented in the case of F.S.E. v. J.R.T., 111 D.P.R. 505 (1981), which has not cited by either of the parties. In this case, the State Insurance Fund

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adjudicate controversies, shall be valid only if the statute itself creating the agency contains governing criteria for the administrative agency to exercise its functions, and said agencies exercise these functions strictly in light of these criteria. See, López Vives v. Policía de P.R., 118 D.P.R. 219 (1987); Ferretería Matos, Inc. v. P. R. Tel. Co., 110 D.P.R. 153 (1980).

and the Brotherhood Union of Employees of the State Insurance Fund subscribed an Agreement of Election by Consent in which they stipulated what type of employees would constitute the suitable unit for purposes of collective bargaining. The Attorneys for the Fund helped comprise the contracting unit and, as such, were included in all the collective bargaining agreements engaged in by the parties. Subsequently, in the negotiation of one of the bargaining agreements entered into, the parties expressly recognized the final authority of the Labor Relations Board over the suitable unit by providing that: "The decision of the Board over the positions included in the suitable unit is final and not subject to any petitions for subsequent review and any person employed in a position similar or equivalent to those included in the unit shall likewise be included therein." Id., at p. 508.

Nevertheless, in the negotiation of the next collective bargaining agreement, the parties discussed the problem of the suitable unit and agreed that the Fund would hire specialists on the subject in order for a scientific study of personnel to be conducted, the exception being made that under no circumstances would the classification or rights of the union members be adversely affected. In addition to this, the parties subscribed a stipulation to the following effect: "The Union agrees that if in future evidence is submitted to it demonstrating that an attorney included in the suitable unit performs work of a managerial nature, said case shall be submitted for consideration to the Grievance Committee for its final decision. Said decision shall be definitive and obligatory for both parties." Id., at p. 509.

Notwithstanding the foregoing, the President of the Brotherhood subsequently petitioned the administrator of the Fund for the attorneys assigned to a particular section of the Fund to be excluded from the suitable unit, because he felt that they were participating and setting administrative policy and were making decisions that, in his judgment, placed them in the managerial category. The matter was submitted to the aforesaid Grievance Committee to determine whether the former were performing managerial functions. Once the Committee began working on the matter, the Fund and the Brotherhood subscribed to a stipulation in which they declared that the functions of the aforesaid attorneys were without doubt managerial and petitioned the Grievance Committee to decree their exclusion. In view of the foregoing, the Committee decreed the requested exclusion.

The excluded attorneys, after requesting the intervention of the President of the Brotherhood, turned to the Labor Relations Board, alleging unlawful practices on the part of the Brotherhood and the Fund for violating their duty of fair and impartial representation (the excluded attorneys had no participation at all in the proceedings described above) and for violation of the terms of the collective bargaining agreement, respectively. The process culminated in the declaration that the accused had committed unlawful labor practices, for which reason an order was issued for the attorneys to be kept in the suitable unit until such time as a petition for clarification of suitable unit pursuant to what was agreed to originally in the first collective bargaining agreement were channelled <u>through the Board</u>, and not the Grievance Committee.

The Supreme Court confirmed the order issued by the Labor Relations Board and stated, at p. 515:

> The parties expressly recognized this jurisdiction of the Board when they subscribed the "Agreement for Election by Consent", to which we have made reference previously, which included the attorneys of the suitable unit. They could not ignore what they had expressly agreed to ... The ruling in J.R.T. v. Manhattan Taxi Cabs Corp., 92 D.P.R. 436 (1965) is applicable, to the effect that an Agree-ment for Election by Consent prohibits the employer from later questioning the manner in which the unit is

> made up, because otherwise it would permit the parties to deliberately ignore what had been agreed to in a mandatory agreement, would open the way for subterfuges to hinder and delay the controversies over representa-tion and would tend to defeat, rather than promote, the purposes of the Labor Relations Act. (Emphasis supplied.)

What is more, at page 517, the Court stated:

> We must keep in mind that throughout the history of collective bargaining in this case the attorneys carried out the same tasks and performed the same functions. From the point at which the suitable unit was stipulated in the

> Election by Consent Agreement, to which we referred at the beginning of this opinion, until today, there has been no variation at all in the tasks which the attorneys for the fund carry out nor modification in the functions which could reasonably serve as grounds for the Brotherhood to request their exclusion from the contracting unit.

In like manner, we have seen that in the case at bar the parties subscribed an agreement wherein, in the first clause, the representative authority of the Federation was unconditionally recognized, its work and functions taken into account at the time of stipulating to said agreement. It is important to emphasize that there is no indication in the allegations that the functions and duties of the organizers have differed in any way from the time of said

stipulation until the filing of this appeal. It is evident from a simple reading of the aforesaid stipulation that the recognition of the Puerto Rican Federation of Workers (the union) as the exclusive representative of the organizers, was full and absolute, with which they automatically acceded to the right of same to bargain collectively.([4]) The only condition set potentially, in the second clause, was that under certain circumstances both parties would waive collective bargaining. Nevertheless, we have already seen that no agreement was ever reached with regard to these conditions.

It is essential to distinguish between the effects of the first and second clauses in the Stipulation Document. Petitioner holds that the fact that the circumstances were conditioned on collective bargaining implies that the

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[4] Labor Relations Act, already cited, Art. 4 (29 L.P.R.A. sec. 65).

Federation was not recognized as the exclusive representative of the organizers. Petitioner is wrong. Both clauses each carry their own force.

The first clause shows no condition at all to limit the recognition rendered by the employee but rather, its own language makes its unconditionality quite clear. Once this recognition was made it was then that the parties agreed that, under certain conditions, the union would waive its right to bargain collectively. It should be noted that the language used in the second clause implicitly recognized that from the start, the union shall be entitled to bargain collectively, and that it should <u>waive</u> such a right. This is so because one can only waive what one has previously been entitled to.([5])

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[5] For the same reason that one cannot waive heirdom without the death of the one's predecessor in title, Civil Code

Moreover, it has already been established that when the terms of a collective bargaining agreement "are clear and leave no space for doubt concerning the intention of the contracting parties,...one must go by the literal sense thereof, as provided by the present Civil Code, Art. 1233, 31 L.P.R.A. sec.

Arts. 603 and 744, 31 L.P.R.A. secs. 2085 and 2370, nor obtain a divorce based on events which took place prior to the date on which the marriage took place. Cf., Rosado v. Rivera, 81 D.P.R. 158 (1959).

3471".([6]) Luce & Co. v. Junta Rel. Trabajo, 86 D.P.R. 425, 433-34 (1962).

It is essential for the Commonwealth of Puerto Rico's public policy, as it regards the relations between employers and employees, to foster maximum production through industrial

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[6] The article cited reads:

> If the terms of a contract are clear and leave no room for doubt concerning the intention of the contracting parties, one shall go by the literal sense of its clauses.
> If the words appear to be contrary to the obvious intention of the contracting parties, the latter shall prevail over the former.

peace, which in turn is obtained through agreements among the parties and collective bargaining. Part of the implementation of these objectives means not promoting strikes or dissention in labor-management relations, but rather facilitating same within a climate of mutual respect and reciprocal recognition of their essential productive interdependence. S.I.U. de P.R. v. Otis Elevator Co., 105 D.P.R. 832 (1977); Labor Relations Act, already cited (29 L.P.R.A. sec. 62).

In J.R.T. v. A.C.A.A., 107 D.P.R. 84, 91 (1978), the Supreme Court, citing a decision of the Labor Relations Board, stated:

> The public policy expressed by the legislature of Puerto Rico in our Act underlines the necessity of promoting collective bargaining as an effective instrument with which to achieve

industrial peace. We feel that the solution through mutual agreement by the parties, of disputes which may arise as a consequence of the application of a collective bargaining agreement, is highly desirable. Such measures may be conceived as the culmination of the process of collective bargaining. Its adoption and application eliminates *[sic]* friction and conflicts which generally affect the relations of the parties and consequently industrial peace. To encourage such practices is, in reality, to stimulate collective bargaining. It must be considered, moreover, that when the parties incorporate measures of this nature in an agreement, they have selected the method which in their judgment is most

> appropriate for resolving the controversies which may arise in light of the contract. Such agreements must be respected. For those reasons, this Board, in compliance with legislative purpose, does not generally hear cases of violation of agreement when the parties have not exhausted the remedies which the same offer for the solution of such problems...

In this respect, see, in addition, Pagán v. Fund. Hosp. Dr. Pila, 114 D.P.R. 224 (1983).

The Labor Relations Board, just as petitioner employer propounds, is certainly a creature of the Labor Relations Act and, as such, is limited to the powers which that same law confers upon it. The aforecited Art. 5 of said act (29 L.P.R.A. sec. 66), limits the Board, upon determining what a suitable unit

consists of, to making such a determination only with individuals who can be categorized as employees in accordance with the provisions of same.([7]) Said article does not include any provision that would allow the unionization of individuals who can be categorized as managerial.([8]) Nevertheless, it should be noted

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[7] Labor Relations Act, cited above, Art. 2, 29 L.P.R.A. sec. 63(3); see p. 5, supra.

[8] Labor Relations Act, cited above, Art. 2, 29 L.P.R.A. sec. 63(2):

> The term "employer" shall include executives, supervisors,

(continued...)

[8](...continued)

that nothing in the law prohibits the waiving of said procedure and election requirements by stipulation of the parties.([9])

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employing party in any labor dispute or collective bargaining.

[9] The National Labor Relations Act, 5 U.S.C. sec. 7101, et. seq., sets forth the basic procedural requirements governing the recognition and certification of unions by the National Labor Relations Board, which are identical to the procedural requirements provided in the aforenamed Labor Relations Act of Puerto Rico.

In 5 U.S.C. sec. 7111(g), of the same [U.S.] National Act, it provides *[English text cited]*:

Nothing in this section shall be construed to prohibit the waiving

The directives and limitations provided by law for certification processes, by virtue of a balance of interests between the employer and the employees, are applicable when it is the Board itself which is to determine whether the group in question may be considered a suitable unit. Nevertheless, when it is the parties, through agreement, which determine that a particular group must organize in order to become an exclusive representative, the Board, by virtue of the agreement made, and advancing the public policy that lays the foundation for the Labor Relations Act itself, may issue certification to that effect by basing itself exclusively on said agreement and, in so doing,

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of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Authority.

shall not be violating the power which is conferred upon it by our Act or the Federal act. This procedure and settlement, both by the parties in subscribing agreements muto proprio, and by the Board in respecting same, is consonant and desirable, according to the objectives and public policy promoted by the Act. Pagán v. Fund. Hosp. Dr. Pila, cited above.

On the other hand, it has already been established that "the Board has ample discretion to determine, on a flexible and functional basis, what constitutes a suitable negotiating unit. The Board takes into consideration such issues as (1) the incentive of collective bargaining; (2) the history of collective bargaining in the business of the specific employer and the industry in its entirety; (3) [the] integration of the processes of labor and administration; (4) [the] abilities of the

employees involved; and (5) the employees' wishes. And the Board's determination concerning what is the suitable negotiating unit is conclusive and shall be confirmed when presented to us in the appropriate case, unless such decision is arbitrary or capricious." (Internal quotes omitted, emphasis supplied.) Rivera v. Junta Relaciones del Trabajo, 70 D.P.R. 5, 12 (1949). See, also, J.R.T. v. A.M.A., 119 D.P.R. 94 (1987); J.R.T. v. Asoc. C. Playa Azul I, 117 D.P.R. 20 (1986); J.R.T. v. Marex Construction Co., Inc., 103 D.P.R. 135 (1974).

From the above, then, it is obvious that the Board could not have acted arbitrarily or capriciously, or outside the jurisdictional powers conferred upon it by the Act, since it never made any determination concerning the adequacy of the constitution of the group of organizers as a suitable unit. It is evident

that it never exercised the discretional power it was given to evaluate the circum-stances of the case on their merits. The Board merely approved an agreement subscribed by the parties on the basis of which it certified the Puerto Rican Federation of Workers as the exclusive representative of the workers in question. It never became necessary to determine if, in effect, the group of organizers constituted a suitable unit, because both parties waived this by stipulation.([10])

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[10] In Negrón Rivera v. Bonilla, Ex parte, 120 D.P.R. 61 (1987), the Supreme Court ruled that when a stipulation puts an end to a lawsuit, as in the case at bar, said stipulation shall constitute a settlement agreement. In that regard, it is already well established by case law that any settlement agreement has the effect of res judicata, even though it

Moreover, the doctrine of one's own acts, established in Puerto Rico jurisprudentially, is applicable.([11]) In light of this doctrine, the

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does not so state. Negrón & Bonilla, Ex parte, cited above; Sucn. Román v. Shelga Corp., 111 D.P.R. 782 (1981).

[11] The Supreme Court has determined that the application of this doctrine shall not be limited to contracts, but rather shall permeate our entire Law. General Electric v. Concrete Builders, 104 D.P.R. 871 (1976); Velilla v. Pueblo Supermarkets, Inc., 111 D.P.R. 585 (1981); Int. General Electric v. Concrete Builders, 104 D.P.R. 871 (1976); Lausell Marxuach v. Díaz de Yáñez, 103 D.P.R. 533 (1975); Berríos v. U.P.R., 116 D.P.R. 88 (1985). For it to be applied, the following requirements must be met:

1. specific behavior

employer is prohibited from collaterally attacking the subscribed stipulation. The purpose of this doctrine is to prevent unjust enrichment and to eliminate contradictory behavior which violates the good faith that must permeate all legal mandates.([12])

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declared invalid, the union's rights would be prejudiced. We already established as well, that respecting the covenants and agreements reached by the parties sustain and advance *[sic]* the Government's public policy with regard to labor-management relations.

[12] Even unilateral declarations of will may propitiate states

(continued...)

[12](...continued)

In the case at bar, the challenge to the validity of the stipulation subscribed by the parties constitutes a frivolous act, lacking in good faith, since it apparently arises from a capricious impulse on the part of the petitioner when it regretted the recognition it made after

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has to produce effects must be resolved --as with all juridical problems-- as criteria of juridical policy which in this case are those which advise protection of said trust.
José Puig Brutaru, Fundamentos de Derecho Civil [Principles of Civil Law], 2nd ed., Barcelona, Bosch, Casa Editorial S.A., Tome I, Vol. II, 1973, p. 56.

the latter had been formalized and, apparently, when it realized the legal effect thereof.

- II -

Nevertheless, it is interesting to note, without granting that said analysis was necessary, that, even if the functions performed by the group of employees in controversy had been evaluated, for purposes of determining the suitable unit, it is not so evident, as petitioner asserts, that they could have been considered as managerial.

The functions which this group performs are the following:

(1) it enforces the rules, strategies and policies of the Teachers Federation.

(2) it develops, plans and recommends a work plan for its

area, in accordance with the problems and needs of the teachers within the assigned area;

(3) its central function is to recruit, organize and affiliate teachers to the Teachers Federation which functions as a labor union;

(4) it represents the Teachers Federation in its area, receives and processes complaints and grievances;

(5) it gives trainings, organizes and directs meetings;

(6) it prepares and distributes written materials;

(7) it visits schools, meets with teachers, school principals and superintendents of schools

for discussion and solution of problems;

(8) it participates in meetings of the Department of Organization and Development to set strategies and policies to be followed by the Teachers Federation throughout the Island;

(9) it organizes, directs, supervises and acts as a liaison with volunteers, union locals (one for each school district);

(10) it is an active, voting member at the assemblies of the Teachers Federation, participates in decision-making of said Federation and

elects the Board of Directors; and

(11) it is an employee of the Department of Public Instruction (now Education), union licensed to render temporary services to the Teachers Federation.

(Writ of certiorari, pp. 6-7.)

Appellant holds that these functions clearly show that these employees are managerial. We differ with petitioner.

From an analysis of the actual scope of said functions, we cannot conclude that the organizers make decisions based on their independent judgment nor that through same they establish the public policy of the Teachers Federation.([13])

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[13] The National Labor Relations Act, 5 U.S.C. sec. 7103(a)(10), defines what

In relation to the constitution of the suitable unit, it has been said [*English text cited*]:

> Unit status depends upon actual duties performed rather than titles. Current duties are examined. To qualify an individual as a supervisor, the exercise of independent supervisory functions should be consistent. But not all supervisory functions must be exercised for the employee to be deemed a supervisor. For example, a food activity foreman who effectively recommended the selection of applicants on several occasions and effectively recommend *[sic]* the selection of applicants on several occasions and

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> individuals who devote a preponderance of their employment time to exercising such authority.

> assignment of work, was routine in nature *[sic]*.

Peter B. Broida, A Guide to Federal Labor Relations Authority Law & Practice, Dewey Publications Inc. 1991, available in WESTLAW, FLRAG, CH.2,I,A, p. 35 (internal quotes omitted).

Hence, receiving and processing complaints and grievances, meeting with teachers for problem solving, participating in Federation meetings to establish strategies and to have the right to vote in the election of the Board of Directors, given their status as members[14], does not imply that the organizers have the authority to establish the public policy of the Teachers

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[14] Petitioner asserts that the aforesaid functions demonstrate the managerial function of the aforenamed employees.

Federation nor that they exercise independent judgment, wherefore, even though closely related to the "management" of the Teachers Federation, they are not a part thereof.

Another of the fundamental elements for ruling on whether a person is an employee or not within the scope of the Labor Relations Act is the financial position he or she is in with the alleged employer, that is, the economic reality between the parties shall prevail over technical-legal classifications which may be made regarding the positions which said persons occupy. Landrón v. J.R.T., 87 D.P.R. 94 (1963).

In this regard, moreover, in the Federal jurisdiction various types of positions and functions have been evaluated and, on the basis thereof, their classification as managerial or employee has been determined for purposes of the suitable unit. To wit *[English text cited]*:

Work or Team Leaders - Work leaders are not super-visors when their responsibility is that of a leadman or more senior and experienced employee vis-a-vis junior and less experienced employees. They have none of the usual indicia of supervisory authority. They take instructions from their supervisors and pass them along to other employees on the job, draw equipment and distribute it and tasks to the other employees, they work alongside the other employees and they report work progress to the supervisors... Restated, a team leader is not a supervisor if he has routine responsibility for assigning work and directing work of a subordinate, but his relationship to the subor-dinate is that of a senior employee to a junior, so that as equal members of the team they discuss each task to be done and plan a

course of action. Emplo-yees were not supervisors or managers who as team leaders routinely assigned work and became involved in the clerical aspects of leave administration and per-formance evaluation, but who exercised no consistent independent judgment. These unit employees included a Maintenance Management Specialist, Supply Systems Analyst and General Engineers... But team leaders may be supervisors...because their work involve[s] inde-pendent judgement requiring assessment of the tech-nical nature of the work being assigned to team members, and requiring relative to assignments an assessment of the expertise and qualifications of team members:

[T]he Authority has found that employees who consistently exercise

independent judgement in assignment of work, as distinguished from performing duties that are only routine in nature, are supervisors...Additionally, the Authority has found employees to be supervisors where it was shown that they consistently exercise independent judgment as to the direction or review of other employees' work...

Inspection positions - Airspace System Inspection Pilots are not supervisors: they do not assign work, recommend promotions or transfers; occasional approval or overtime for crew members is routine in nature.

Researchers - For example, an individual was held not to be a manager under the army ADP case because he was a professional whose actions assisted in implementing rather than in shaping the Activity's policies. Army ADP has been further defined to mean that performance of duties as an expert or professional redenring *[sic]* resource information or recommendations as to policies would not justify classification as a management official; there must be a finding that duties and responsibilities involved extend to the point of active participation in the ultimate determination of what policy will be.

Expert Advisors - Under Dept. of Interior, Fish and Wildlife Service, Patuxent Wildlife Research Center and

> AFGE, 7 FLRA 643 (1982), employees were not managers who served as experts or professionals rendering resource information relation *[sic]* to agency policies, specifically, national hunting regulations. They did not come to independent decisions as to what agency policy would be or what recommendations would be made to the agency regulations committee. Those recommendations were formed through discussions between the employees and their supervisors...

Broida, op. cit., pp. 49, 54, 57 and 59 (internal quotes omitted).

After an analysis of the above, which, in our judgment, for the most part encompass the functions which in effect were performed by the organizers of the Teachers Federation in the case at bar, we conclude that even if the case had been heard on its merits, the group of

organizers would probably have been deemed a suitable unit.

Nevertheless, we wish to emphasize the fact that, in the face of a stipulation subscribed by the parties wherein the representative status of the appellee is unconditionally recognized, the Board did not have to evaluate the composition of the union unit to proceed to certify it. As we have already found, by subscribing said stipulation, both parties waived the presentation of evidence to that effect. We therefore conclude that the Labor Relations Board acted reasonably and in consonance with the Labor Relations Act by certifying the Puerto Rican Federation of Workers and, consequently, ordering the collective bargaining.

Pursuant to the foregoing, we rule that the illustrious sentencing court acted correctly in giving full validity and deference to the stipulation made by the parties. Petitioner is

prohibited from questioning the validity thereof, as well as the manner in which the suitable unit is made up. Otherwise the parties would be allowed to "deliberately ignore what was agreed to in an obligatory agreement". F.S.E. v. J.R.T., 111 D.P.R. at p. 515.

In the absence of any evidence to demonstrate that the Board acted with prejudice

or partiality([15]), the confirmation of the appealed sentence is proper.

- III -

In view of this case record, the appealed sentence is confirmed.

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[15] The findings issued by the Labor Relations Board are deserving of great deference by the courts and in the absence of evidence [to show] that there was prejudice or partiality involved, shall not be altered. Labor Relations Act, cited above, 29 L.P.R.A. sec. 70; J.R.T. v. A.M.A., cited above; J.R.T. v. Marex Const. Co. Inc., cited above; Rivera v. Junta Relaciones del Trabajo, 70 D.P.R. 5 (1949).

So decreed and ordered by the Court and so certified by the Chief Clerk.

[Signature]

Yolanda Toyos Olascoaga

Chief Clerk

[There is an illegible circular rubber stamp.]

- CERTIFIED -

o be a correct translation prepared by

Certified Court Interpreter
Administrative Office of the
United States Courts